80-2150

No. .....

Office-Supreme Court, U.S.
FILED
JUN 17 1981
ALEXANDER L. STEVAS,
CLERK

Supreme Court of the United States

October Term, 1980

DONALD FINNEGAN, *et al.*,
Petitioners,

vs.

HAROLD D. LEU, *et al.*,
Respondents.

PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit

SAMUEL G. BOLOTIN
Counsel of Record
BOLOTIN & BOLOTIN CO., L.P.A.
Second Floor Gardner Building
506 Madison Avenue
Toledo, Ohio 43604
(419) 241-1900
Counsel for Petitioners

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-5647

QUESTION PRESENTED

1. Were the Landrum-Griffin Freedom of Speech Political Rights of fifteen (15) appointed business agents violated by the summary wholesale discharge of the business agents by the prevailing presidential candidate, Harold D. Leu, for their support of the opposition candidate, Omar L. Brown, in the 1977 officers' election for Teamsters Local 20?

LIST OF ALL PARTIES

The petitioners are: Donald Finnegan, Bobby Haney, Ronald Bowman, Denver Phillips, William Tank, Richard Eddington, Charles Winters, and Edward Stricklin. The petitioners represent eight of the original fifteen business agents who were discharged by Harold D. Leu upon his defeat of Omar L. Brown during the 1977 Teamsters Local 20 Officers' Election.

The Plaintiffs in the Court below included the above-named petitioners as well as seven other business agents who were also summarily discharged for their political support of candidate Brown. The other plaintiffs include Raymond Navarro, who renounced his political support for Brown and returned to work for Leu, James Root the vice president elected during the 1977 officers election who has since died, Frank Howald who left the Teamster industry and took a job with management, and Harry Starkey, John Clark, Donald Jahns and Levernon Hubbard who have elected not to join in the appeal for financial reasons.

TABLE OF CONTENTS

Questions Presented I
List of All Parties I
Table of Authorities III
Opinion Below 1
Jurisdiction 2
Statutory Provisions Involved 2
Statement of the Case 2
Reasons for Granting the Writ 6
Conclusion 12

Appendix:

Opinion of the United States Court of Appeals for the Sixth Circuit (Filed March 23, 1981) A1
Opinion and Order of the U.S. District Court Western Division (Filed March 30, 1979) A4
United States Code A9

TABLE OF AUTHORITIES

Cases

Alvino v. Bakery Workers Union, 46 LRRM 2812 (D.C. Cir. 1960) 9
Bakery & Confectionery Workers International Union v. Ratner, 335 F.2d 691, 56 LRRM 2432 (D.C. Cir. 1964) 9, 11
Bradford v. Textile Workers, 563 F.2d 1138, 96 LRRM 2690 (4th Cir. 1977) 6, 9
Calhoun v. Harvey, 379 U.S. 134, 57 LRRM 2561 11
Cooke v. Orange Belt District Council, 529 F.2d 815, 91 LRRM 2349 (9th Cir. 1976) 9, 10

DeCampli v. Greeley, 293 F. Supp. 746, 69 LRRM 2786 ..... 6, 9, 10

Gabauer v. Woodcock, 520 F.2d 1084, 89 LRRM 2961 (8th Cir. 1975), *cert. denied*, 423 U.S. 1061 (1976) 6, 9, 10

George v. Bricklayers Union, 255 F. Supp. 239, 62 LRRM 2478 9

Grand Lodge v. King, 335 F.2d 340, 56 LRRM 2639 (9th Cir.), *cert. denied*, 379 U.S. 920, 57 LRRM 2512 (1964) 6, 9, 10

Kuebler v. Lithographers Local 24-P, 473 F.2d 359, 82 LRRM 2717 (6th Cir. 1973) 11

Local 648 v. Retail Clerks International Association, 299 F. Supp. 1012, 70 LRRM 3366 ..... 6, 9, 11

Martire v. Laborers' Local Union 1058, 410 F.2d 32 (3d Cir.), *cert. denied*, 396 U.S. 903 (1969) 9

Miller v. Holden, 535 F.2d 912, 95 LRRM 2152 (5th Cir. 1976) 10

Newman v. Local 1101, Communication Workers of America, 570 F.2d 439 (2d Cir. 1978) 6, 9

Price v. United Mine Workers, 376 F. Supp. 1015, 86 LRRM 2577, *aff'd without opinion*, 515 F.2d 1018, 90 LRRM 2844 (D.C. Cir. 1975) 9

Salzhandler v. Caputo, 52 LRRM 2910, 2911 10

Sheridan v. United Bros. of Carpenters, 306 F.2d 152 50 LRRM 2637 (3d Cir. 1962) 6, 10

Wambles v. International Brotherhood of Teamsters, etc., 488 F.2d 888 (5th Cir. 1974) 6, 9, 10

Wirtz v. Bottleblowers Assn, 389 U.S. 463, 67 LRRM 2129 11

Wirtz v. Hotel Employees, 391 U.S. 492, 68 LRRM 2305 11

Wood v. Dennis, 489 F.2d 849, 84 LRRM 2662 (7th Cir. 1972), *cert. denied*, 415 U.S. 960, 85 LRRM 2530 ..... 6, 9, 10

Statutes

29 U.S.C.A. §401 *et seq.*:

§401 (a)(1) 2
§401 (a)(2) 2
§411 (a)(1) 2, 7, 8, 9, 10
§411 (a)(2) 2, 7, 8, 9, 10
§412 ..... 8, 10, 11
§529 ..... 2, 8, 9, 10, 11

No. .....

Supreme Court of the United States

October Term, 1980

DONALD FINNEGAN, *et al.*,
Petitioners,

vs.

HAROLD D. LEU, *et al.*,
Respondents.

PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit

OPINION BELOW

The opinion and order of the United States District Court for the Northern District of Ohio Western Division granting the Defendants' motion for summary judgment is reproduced in the Appendix at page A4. The Opinion and Order of the United States Court of Appeals for the Sixth Circuit affirming the judgment of the District Court is reproduced in the Appendix at page A1.

JURISDICTION

The judgment of the Court of Appeals was entered on March 23, 1981, and issued as a mandate on or about June 11, 1981. The petitioners had originally attained an order staying the mandate for thirty (30) days on May 12, 1981, but did not seek to continue the stay of the mandate. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

This case involves §401(a)(1) and (2) and §529 of the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. §411(a)(1) and (2) and 29 U.S.C. §529, commonly known as the Landrum-Griffin Act with Title I of the Act known as the "Bill of Rights of members of labor organizations" (Appendix page A9).

STATEMENT OF THE CASE

This suit was originally brought by fifteen (15) appointed business agents who were summarily discharged by Harold D. Leu, the prevailing presidential candidate during the 1977 Teamsters Local 20 officers' election. Defendant Leu discharged all the business agents as his first official act in office after his defeat of his opposition candidate Omar L. Brown in retaliation for the business agents' political support for Brown.

The facts giving rise to this appeal can be simply stated. Local 20 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization of some 12,500 members in Northwestern

Ohio. From its inception some twenty-five years ago, it has had only four presidents, one of whom served a term of nine months (Tr. 61-63).[1]

The first seriously contested election for the officership of Local 20 occurred in December of 1974. The December 1974 election, which pitted a slate headed by Omar L. Brown against a slate headed by Harold D. Leu, found Leu the winner by some forty-odd votes. The election was set aside by the International Brotherhood of Teamsters pursuant to Brown's internal union appeal as a result, *inter alia*, of irregularities which occurred at the polling places. A second election which occurred in September of 1975 found the same two candidates pitted against one another, only this time Omar L. Brown was the victor by well over five hundred votes.

December, 1977 brought the third election to Local 20 in less than three years with the same two candidates facing one another. This time Leu was declared the victor by twenty-nine votes, and the Brown slate filed another protest, complaining of union election violations. The internal protest was investigated by the International Union and denied. Brown then filed a complaint with the Secretary of Labor.[2]

Needless to say, campaigning on behalf of both slates in the December, 1977 election was vigorous (Tr. 63).

---

1. "Tr." refers to the pages in the appendix in the Court of Appeals.

2. After an investigation, the Secretary of Labor determined that employer contributions may have affected the outcome of the election and suit was brought in the District Court for the Northern District of Ohio. After a trial on the merits the Trial Court found that there indeed were election violations and ordered a rerun election under the supervision of the Secretary of Labor. During the supervised rerun election incumbent Harold Leu defeated Omar Brown by the narrow margin of 165 votes out of some 6500 votes cast.

Plaintiff-Petitioners in this case were employed as business agents under the Brown administration, which held office from September, 1975 to December, 1977. Each of them was, at all material times mentioned herein, a member in good standing of Teamsters Local 20.

It is undisputed that as business agents each was an *appointed* official of the union appointed pursuant to the Bylaws of the Local by the then President of Local 20, Omar Brown. Plaintiff-Petitioners were appointed by President Brown because of all the former business agents under the Leu administration resigned *en masse* prior to Brown's officially taking office in September of 1975 (Tr. 72, 127). In past elections, business agents were not summarily discharged (Tr. 77, 127).

After Leu's victory was determined, he was sworn into office on Friday, December 30, 1977, late in the afternoon. The union offices were closed for the weekend, as well as on Monday, January 2, 1978, in celebration of the new year. On January 3, 1978, Leu's first official day in office, he called all of the Plaintiffs-Petitioners to a meeting and fired them wholesale, without notice, giving as his reason that they were "loyal to Brown and not to him" and that "he believed that they would not follow his policies and programs implemented under his administration." (Tr. 70, 90-91).

Prior to the wholesale discharge of the business agents Leu did not seek out any of them in order to ask them whether they would work under his administration nor did he seek out other officers of the Local to determine which agents would be willing to support his platforms (Tr. 89-91). He summarily discharged these agents without a hearing, even though they had pledged their support to the Local under his administration pursuant to Mr. Brown's request (Tr. 66-67). He was bitter because they had sup-

ported Omar Brown and had campaigned against him (Tr. 90-91).

Later as President, Leu undertook a course of action directed at denying the business agents employment within the jurisdiction of Local 20, which ultimately resulted in many of them being denied membership within the Local Union (Tr. 331-339).

Once terminated most of the agents lost all their seniority, pension and health and welfare rights because they were unable to return to their prior employment within the Teamster industry (Tr. 96-97). Agents with as many as 18 years seniority, years of service as stewards, chief stewards and business agents, suddenly were not only out of work, but also were unable to participate any longer in union affairs (Tr. 331-339). Indeed several of the business agents were no longer Teamster members and were forced into leaving the industry after many years of loyal service as Teamsters. See Motion of Frank Howald to withdraw from appeal filed with the Court of Appeals on or about June 7, 1979.

It is from this wholesale discharge and pattern of hostility directed at driving the business agents from the Teamster industry and at depriving them of their Landrum-Griffin rights which forms the basis of the lawsuit and the appeal herein. Specifically, the Petitioners appeal from the District Court's opinion and order of March 30, 1979 granting Defendants' motions for summary judgment and the order of the United States Court of Appeals for the Sixth Circuit upholding the District Court's decision that plaintiffs had not alleged a valid cause of action against the Defendants (Appendix).

REASONS FOR GRANTING THE WRIT

Both the District Court opinion and the opinion of the Sixth Circuit Court of Appeals adopted the minority line of authority among a split in the circuit courts on whether union employees or officers who are also union members have a cause of action under the LMRDA when they are discharged in retaliation for exercising rights guaranteed them as union members. Prior to the Sixth Circuit's decision a majority of the circuit courts have held such discharges unlawful. *Wood v. Dennis*, 489 F.2d 849 (7th Cir. 1973), *cert. denied*, 415 U.S. 960 (1974); *DeCampli v. Greeley*, 293 F. Supp. 746 (N.J. 1968); *Gabauer v. Woodcock*, 520 F.2d 1084 (8th Cir. 1975), *cert. denied*, 423 U.S. 1061 (1976); *Bradford v. Textile Workers of America, AFL-CIO*, 563 F.2d 1138 (4th Cir. 1977); *Grand Lodge of International Ass'n of Machinists v. King*, 335 F.2d 340 (9th Cir.), *cert. denied*, 379 U.S. 920 (1964); *Retail Clerks Union, Local 648 v. Retail Clerks Int. Ass'n*, 299 F. Supp. 1012 (D.D.C. 1969). Other courts have held otherwise. *Sheridan v. United Bro. of Carpenters*, 306 F.2d 152 (3d Cir. 1962); *Wambles v. International Bro. of Teamsters, Chauffeurs*, 488 F.2d 888 (5th Cir. 1974); *Newman v. Local 1101, Communications Wkrs.*, 570 F.2d 439 (2d Cir. 1978).[3]

Petitioners submit that the Sixth Circuit erred in upholding the discharges of the appointed business agents and in following the minority authority of the Second, Third, and Fifth Circuits. Petitioners submit that the majority authority holding said discharges to be unlawful of the Fourth, Seventh, Eighth and Ninth Circuits is the better viewpoint since important Landrum-Griffin rights

---

3. See *Newman v. Communication Workers*, 101 LRRM 2265 (2d Cir. April 25, 1979). On remand the 2nd Circuit seems to have joined the majority of authority.

were violated. These rights extend not only to the petitioners and all the original fifteen business agents but also extend to all union members.

As a result of evidence discovered in Congressional hearings that some labor organizations were engaging in acts of corruption, dictatorial practices and racketeering, Congress felt it necessary to take remedial action in the form of legislation to insure the processes of democratic self-government within labor organizations. The act which governs and controls the internal affairs of a labor organization is the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C.A. Section 401 *et seq.*, commonly known as the Landrum-Griffin Act.

Title 1 of the Act, known as the "Bill of Rights of Members of Labor Organizations", provides certain protection for rank-and-file members of labor organizations directly applicable here. Section 411(a)(1) and (2) provide as follows:

> "(a)(1) *Equal rights.*—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations, and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws."
>
> "(2) *Freedom of speech and assembly.*—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and

reasonable rules pertaining to the conduct of meetings: *Provided,* that nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations."

Section 529 of the same Act provides additional safeguards for union members as follows:

"It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this chapter. The provisions of Section 412 of this title shall be applicable in the enforcement of this section."[4]

Simply stated, the business agents were fired for exercising their rights to vote in elections of officers of their choice, and for exercising their rights to meet and assemble with other members to express their views, arguments and opinions upon candidates in the 1977 officers' election for Teamsters Local 20. Their acts and conduct are and were protected by the provisions of §401(a)(1) and (2) of Landrum-Griffin.

---

4. Section 412 is the jurisdictional grant and provides as follows:

"Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred or where the principal office of such labor organization is located."

In addition, it is the position of the business agents that §529 prohibits the Defendants from "otherwise disciplining" its members for exercising rights to which they are entitled under §401(a)(1) and (2). Thus their removal as business agents was such prohibited discipline.

Not surprisingly, the precise issues raised in this case have been faced by a number of Circuits. The overwhelming weight of authority holds that the actions engaged in by Defendant Leu by his wholesale firing of the business agents for their political support of Omar Brown is conduct prohibited by Landrum-Griffin. *Grand Lodge v. King*, 335 F.2d 340, 56 LRRM 2639 (9th Cir. 1959), *cert. denied*, 379 U.S. 920, 57 LRRM 2512 (1964); *Bradford v. Textile Workers*, 563 F.2d 1138, 96 LRRM 2690 (4th Cir. 1977); *Wood v. Dennis*, 489 F.2d 849, 84 LRRM 2662 (7th Cir. 1972), *cert. denied*, 415 U.S. 960, 85 LRRM 2530 (1974); *Gabauer v. Woodcock*, 520 F.2d 1084, 89 LRRM 2961 (8th Cir. 1975); *Cooke v. Orange Belt District Council*, 529 F.2d 815, 91 LRRM 2349 (9th Cir. 1976). See also, *Local 648 v. Retail Clerks International Association*, 299 F. Supp. 1012, 70 LRRM 3366 (D.D.C. 1969); *DeCampli v. Greeley*, 293 F. Supp. 746, 69 LRRM 2786 (D.N.J. 1968); *George v. Bricklayers Union*, 255 F. Supp. 239, 62 LRRM 2478 (E.D. Wisc. 1966); *Price v. United Mine Workers*, 376 F. Supp. 1015, 86 LRRM 2577 (D.D.C. 1974), *aff'd without op.*, 515 F.2d 1018 (D.C. Cir. 1975), 90 LRRM 2844; *Alvino v. Bakery Workers Union*, 46 LRRM 2812 (D.C. Cir. 1960), approved in *Bakery & Confectionery Workers International Union v. Ratner*, 335 F.2d 691, 56 LRRM 2432 (D.C. Cir. 1964). For contra authorities see *Newman v. Local 1101, Communication Workers of America*, 570 F.2d 439 (2d Cir. 1970); *Wambles v. International Brotherhood of Teamsters, etc.*, 488 F.2d 888 (5th Cir. 1974). *Martire v. Laborers' Local Union 1058*, 410 F.2d 32 (3d Cir.), *cert. denied*, 396 U.S. 903 (1969).

There are two established theories which support the business agents' position in this case. First, the vast majority of cases which have dealt with the subject and which are noted above have held that the removal from a union position as a result of the expression of political views infringes upon rights protected by 29 U.S.C.A. §411 (a)(1) and (2) and thus to be fired for exercising those rights is a form of discipline prohibited by 29 U.S.C.A. §529. See, e.g., *Grand Lodge v. King*, 56 LRRM at 2642; *Wood v. Dennis*, 84 LRRM at 2665-2666; *Gabauer v. Woodcock*, 29 LRRM at 2965-2966; *Cooke v. Orange Belt District Council*, 91 LRRM at 2351-2352.

Additionally, event absent a finding by this Court that the removal from appointive union office for engaging in political activity was "discipline" within the meaning of 29 U.S.C. §529, it is submitted that 29 U.S.C.A. §411 (a)(1) and (2) present an independent basis via 29 U.S.C.A. §412 to prevent retaliation by a local union or its officer, in any form, for engaging in acts of voting, free speech or assembly protected by the Act. *Salzhandler v. Caputo*, 52 LRRM 2910, 2911; *Miller v. Holden*, 535 F.2d 912, 95 LRRM 2152, 2155 (5th Cir. 1976).[5]

Perhaps the matter was most succinctly stated by Judge Gesell of the District Court of the District of Columbia when he said simply:

---

5. The Fifth Circuit was one of those few circuits which held that removal from appointive office was not the kind of "discipline" contemplated by 29 U.S.C.A. §529. See, *Wambles v. International Brotherhood of Teamsters*, 488 F.2d 888 (5th Cir. 1974). The decision in *Miller v. Holden*, *supra*, undercut *Wambles* in two ways. First, *Holden* finds an independent cause of action for removal from union office in political retaliation in 29 U.S.C.A. §411(a)(1) and (2) through §412 regardless of the applicability of §529. In addition, *Wambles* is explicitly confined to its facts at 95 LRRM 2155.

The Third Circuit also rejects the majority view, *Sheridan v. Carpenters*, 306 F.2d 152, 50 LRRM 2637 (3d Cir. 1962). But compare *DeCampli v. Greeley*, *supra*, at 69 LRRM 2786, which distinguishes *Sheridan* and relies on *Grand Lodge v. King*.

"Union members cannot, under the terms of the Act, be placed in the predicament of choosing between the right of free expression under §101(a) [29 U.S.C.A. §411(a)] and their jobs. This fundamental concept of the goals and prohibitions of the LMRDA is supported by the decision[s] in this District . . . . (citations omitted)." *Local 648 v. Retail Clerks International Association, supra,* at 70 LRRM 3371.

In short, the evidence below demonstrated that after a vigorous election campaign in which the business agents supported the opponent of Defendant Leu, they were summarily discharged, without notice, for engaging in the right to vote and the right to freely express their views on union candidates for election; rights protected by the LMRDA (Tr. 70, 90-91).

It has been clear since its inception that the LMRDA was *to be read broadly* to support the Congressional mandate of permitting union members to participate in the political affairs of their union without interference or retribution. See, *Wirtz v. Hotel Employees,* 391 U.S. 492, 68 LRRM 2305 (1968); *Wirtz v. Bottleblowers Assn.,* 389 U.S. 463, 67 LRRM 2129 (1968); *Calhoun v. Harvey,* 379 U.S. 134, 57 LRRM 2561 (1964); *Bakery & Confectionery Workers Intern'l U. v. Ratner,* 335 F.2d 691, 56 LRRM 2432 (D.C. Cir. 1964); *Kuebler v. Lithographers Local 24-P,* 473 F.2d 359, 82 LRRM 2717 (6th Cir. 1973).

In the case at bar it is not even necessary to take a broad view of the Act's proscriptions. Removal from office because of political expression whether viewed as "discipline" under §529 or an "infringement" under §412 is equally unlawful and clearly works to frustrate the Congressional policy mandated by the Act. There are clear lines of authority, supporting either proposition which, it is respectfully urged, this Court should follow.

CONCLUSION

The District Court and the Sixth Circuit Court of Appeals in affirming the Defendants' motion for summary judgment, adopted the minority viewpoint among the Circuit Courts of Appeal in upholding the discharge of the fifteen business agents for their political support of Defendant Leu's opposition candidate, Omar L. Brown during the 1977 officers election. The majority of the Circuit Courts of Appeal (Second Circuit, Fourth Circuit, Seventh Circuit, Eighth Circuit and Ninth Circuit) have clearly held that union employees who are also union members have a cause of action under the LMRDA when they are discharged in retaliation for exercising rights guaranteed them as union members. The Sixth Circuit erroneously adopted the minority viewpoint held by the Third Circuit Court of Appeals and the Fifth Circuit Court of Appeals. Accordingly, petitioners request that a Writ of Certiorari be allowed and this Court review the judgment of the Court of Appeals and reverse its decision affirming the District Court's granting of Defendants' motion for summary judgment holding that Petitioners have not asserted a cause of action under the LMRDA.

Respectfully submitted,

SAMUEL G. BOLOTIN
Counsel of Record
BOLOTIN & BOLOTIN CO., L.P.A.
Second Floor Gardner Building
506 Madison Avenue
Toledo, Ohio 43604
(419) 241-1900
Counsel for Petitioners

APPENDIX

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

(Filed March 23, 1981)

No. 79-3415

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RAYMOND NAVARRO, *et al.*,
Plaintiffs-Appellants,

v.

HAROLD D. LEU, *et al.*,
Defendants-Appellees.

ORDER

Before: MERRITT and KENNEDY, *Circuit Judges;* TAYLOR, *District Judge**

Plaintiffs appeal from a judgment of the District Court granting summary judgment for defendants. Plaintiffs, 15 appointed union business agents, were fired by defendant Harold D. Leu upon his election as union president after a hotly contested series of elections which had to be rescheduled because of irregularities. The constitution of the union provided that business agents serve at the pleasure of the president. Following their discharges,

*Honorable Anna Diggs Taylor, District Judge, United States District Court, Eastern District of Michigan, sitting by designation.

plaintiffs instituted this action alleging those discharges violated their rights under sections 101(a)(2) and 609 of the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. §§ 411(a)(2), and 529.

Section 101(a)(2) provides:

> *Freedom of speech and assembly* - Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided*, that nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with the performance of its legal or contractual obligations.

Section 609 provides:

> It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of the chapter. The provisions of section 412 of this title shall be applicable in the enforcement of this section.

The courts have split on the issue of whether union employees (or officers) who are also union members have a cause of action under the LMRDA when they are discharged in retaliation for exercising rights guaranteed them

as union members. A majority have held such discharges unlawful. *Wood v. Dennis*, 489 F.2d 849 (7th Cir. 1973), *cert. denied*, 415 U.S. 960 (1974); *DeCampli v. Greeley*, 293 F. Supp. 746 (N.J. 1968); *Gabauer v. Woodcock*, 520 F.2d 1084 (8th Cir. 1975), *cert. denied*, 423 U.S. 1061 (1976); *Bradford v. Textile Wkrs. of America, AFL-CIO*, 563 F.2d 1138 (4th Cir. 1977); *Grand Lodge of International Ass'n of Machinists v. King*, 335 F.2d 340 (9th Cir.), *cert. denied*, 379 U.S. 920 (1964); *Retail Clerks Union, Local 648 v. Retail Clerks Int. Ass'n*, 299 F. Supp. 1012 (D.D.C. 1969). Other courts have held otherwise. *Sheridan v. United Bro. of Carpenters*, 306 F.2d 152 (3d Cir. 1962); *Wambles v. International Bro. of Teamsters, Chauffeurs*, 488 F.2d 888 (5th Cir. 1974); *Newman v. Local 1101, Communications Wkrs.*, 570 F.2d 439 (2d Cir. 1978). In dismissing plaintiffs' cause of action, the District Court followed the minority view as set out in *Wambles, supra*. This Court agrees with the Fifth Circuit that a union president should be able to work with those who will cooperate with his program and carry out his directives, and that these business agents, who served at the pleasure of the union president, and actively supported the president's opponent could be removed from their employment as union business agents.

Accordingly, the judgment is affirmed for the reasons set forth in the well-written opinion of Judge Young filed on March 30, 1979.

ENTERED BY ORDER OF THE COURT

/s/ JOHN P. HEHMAN
Clerk

OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT

(Filed March 30, 1979)

Civil No. C-78-8

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

RAYMOND NAVARRO, *et al.*,
Plaintiffs,

VS.

HAROLD LEU, *et al.*,
Defendants.

OPINION AND ORDER

YOUNG, *J*:

This cause came to be heard upon motions of the defendants for summary judgment. Fed. R. Civ. P. 56. Plaintiffs have opposed the motion.

The action was commenced on January 6, 1978, by fifteen individuals who are members of Local 20 of the Teamsters Union. Jurisdiction is based on the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §§401, *et seq.* Each plaintiff, it is alleged, was serving as an appointed business agent for Local 20. During the union presidency campaign in November of 1977, plaintiffs campaigned for the slate headed by Mr. Omar Brown. However, the

defendant Harold Leu was declared the winner in that election.[1]

Rule 56(c), Fed. R. Civ. P. provides for the entry of summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact. Here, the record before the Court is extensive. On January 17, 1978, a hearing was held on a motion for preliminary injunction where evidence was taken and the arguments of counsel heard. Several depositions and affidavits are on file as well as the detailed briefs of counsel. On the basis of this record, the Court can determine that there is no genuine issue of material fact and that summary judgment may be entered.

Title 1 of the LMRDA, 29 U.S.C. §§401, *et seq.*, establishes a bill of rights for union members. Title 29 U.S.C. §§411(a)(1) and (2) provide:

> (1) Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.
>
> (2) Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candi-

1. The election itself is contested in a separate action. *Marshall, Secretary v. Local 20, etc.*, C 78-407, N.D. Ohio, W. Division.

> dates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *provided,* That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

Title 29, U.S.C. §529 provides:

> It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline any of its members from exercising any right to which he is entitled under the provisions of this chapter. The provisions of section 412 of this title shall be applicable in the enforcement of this section.

Essentially, two lines of authority have developed regarding the employment termination of union employees for political activity. One line of authority would hold the discharge unlawful. *Grand Lodge v. King,* 335 F.2d 340 (9th Cir. 1959), *cert. denied,* 379 U.S. 920 (1964); *George v. Bricklayers Union,* 255 F.Supp. 239 (E.D. Wisc. 1966); *Price v. United Mine Workers,* 376 F.Supp. 1015 (D.D.C. 1974); *aff'd without opinion,* 515 F.2d 1018 (D.C. Cir. 1975). A more modern line of authority would permit the discharge. *Newman v. Local 1101, Communication Workers of America,* 570 F.2d 439 (2d Cir. 1978); *Wambles v. International Brotherhood of Teamsters, etc.,* 488 F.2d 888 (5th Cir. 1974). *Martire v. Laborers' Local Union 1058,* 410 F.2d (3d Cir.), *cert. denied,* 396 U.S. 903 (1969).

The basis principles of the statutory provisions are rather straightforward. The statutes were designed to protect the rghts of *union members. Wambles v. International Brotherhood of Teamsters, supra; Newman v. Local 1101, supra.* Plaintiffs, while acknowledging a distinction between union membership and employment in the union, claim that the distinction should not apply because of the "unique nature" of this local's organization.

Local 20 apparently is a fairly large local with some 14,000 members. The bylaws of the union provide for a legislative assembly known as the Stewards' Council. This institution is designed to govern the affairs of the union and is made up of officers, shop stewards and full time business agents or representatives of the union. As appointed business agents, the plaintiffs sat on the Stewards' Council and participated in the formation of union policy. After each plaintff was terminated as a business agent by the defendants, it was necessary for him to attempt to return to employment within the industry. Termination as a business agent did not mean that the plaintiffs were otherwise ineligible to continue union membership.

As a member of a union, a union official or employee enjoys the rights guaranteed by the LMRDA. Suspension or removal for the exercise of protected rights would violate the Act. *Newman v. Local 1101, supra,* and cases cited therein. On the other hand, a union official or employee has certain duties to the organization he represents as well as to its leadership. Once in a position of authority within the union, the leadership can legitimately expect a member to engage in conduct consistent with the leadership's established policies. Unless the leadership can command a certain degree of loyalty from the union's agents, it can not function effectively.

In this case, plaintiffs were wearing two hats. They were union members and union officials. Clearly there has been a tension between these two roles. The Court believes that the better authority is that which would permit the termination of union employees. The firings here were only from appointed membership on the Stewards' Council. The union leadership can discipline a union steward or agent by removing him from his appointed position, where, as here, the members, rights of free speech as *union members* has not been affected. By terminating the plaintiffs here, they have not lost any of their rights as union members. They remain free to work in the industry and to seek union office.

Plaintiffs contend that the actions of the defendant Harold Leu were taken in bad faith and in retaliation for union campaign activity. The record is clear in this case that the union presidency election which gave rise to the present situation was contested hotly. Plaintiffs here campaigned openly for the candidate who was declared the loser. For the reasons set forth herein, this Court finds that plaintiffs were subject to termination from their appointed positions without the necessity of a determination by the newly elected leadership that they could not support the new policies. The evidence does not indicate that the firings were an attempt to stifle dissent in the union.

Finally, plaintiffs contend in their response to defendants' motion for summary judgment that they have been barred from future employment in the industry by the defendants. The action here, however, was not directed at whether the defendants, in concert with employers, schemed to deprive plaintiffs of employment in the industry. The complaint questioned only whether the terminations from union office violated the Act. Further, plaintiffs have not sought leave to amend, and at this late

date, such an amendment would be untimely. In any event, this Court does not have a basis to expand the focus of this litigation to the question of whether the union membership rights of the plaintiffs have been violated. If these serious allegations can be established, they must be the substance of a separate action.

THEREFORE, for the reasons stated, good cause appearing, it is

ORDERED that the motion of the defendant union for leave to file a reply brief be, and it hereby is, sustained, and the clerk shall file the previously lodged reply brief; and it is

FURTHER ORDERED that the motions of the defendants for summary judgment be, and they hereby are, sustained, and the clerk shall enter judgment in accordance herewith.

IT IS SO ORDERED.

/s/ DON J. YOUNG
United States District Judge

UNITED STATES CODE

29 U.S.C.A. §411(a)(1) and (2)

(a)(1) EQUAL RIGHTS—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations, and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

(2) FREEDOM OF SPEECH AND ASSEMBLY—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly bewore the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided*, that nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

29 U.S.C.A. §412

Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred or where the principal office of such labor organization is located.

29 U.S.C.A. §529

It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this chapter. The provisions of Section 412 of this title shall be applicable in the enforcement of this section.

Office - Supreme Court, U.S.
FILED
NOV 23 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-2150

In the Supreme Court of the United States

October Term, 1981

DONALD FINNEGAN, *et al.*,
Petitioners,

vs.

HAROLD E. LEU, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JOINT APPENDIX

SAMUEL G. BOLOTIN, *Counsel of Record*
BOLOTIN & BOLOTIN CO., L.P.A.
Second Floor, Gardner Building
506 Madison Avenue
Toledo, Ohio 43604
(419) 241-1900
Counsel for Petitioners

JACK GALLON
JEFFREY JULIUS, *Counsel of Record*
GALLON, KALNIZ & IORIO CO., L.P.A.
3161 N. Republic Boulevard
Toledo, Ohio 43615
(419) 535-1976
Counsel for Respondents

Petition for Certiorari Filed June 17, 1981
Certiorari Granted October 5, 1981

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-5647

TABLE OF CONTENTS

Relevant Docket Entries of the United States District Court—Case No. C78-8 1

Relevant Docket Entries of the United States Court of Appeals for the Sixth Circuit—Case No. 79-3415 2

Complaint (January 6, 1978) 4

Transcript of Hearing on Preliminary Injunction (Hearing Commenced January 17, 1978) 8

Appearances 8

Daniel G. Farbrother—

Direct Examination 8

Cross Examination 12

Re-Direct Examination 16

Re-Cross Examination 16

Denver Phillips—

Direct Examination 17

Cross Examination 18

Harry Starkey—

Direct Examination 19

Cross Examination 20

Raymond Navarro—

Direct Examination 21

Cross Examination 22

Harold Leu—

Direct Examination 23

Cross Examination 25

Daniel G. Farbrother (Rebuttal Evidence)—

Direct Examination 28

Answer (January 31, 1978) 29
Motion for Summary Judgment of Local No. 20 (August 25, 1978) 33
Affidavit of Harold D. Leu 34
Motion for Summary Judgment of Harold Leu (August 31, 1979) 35
Deposition of Raymond Navarro (August 31, 1978) 36
Deposition of Denver Phillips (August 31, 1978) 38
Deposition of Charles Winters (August 31, 1978) 39
Deposition of Ronald Bowman (August 31, 1978) 40
Deposition of John Clark (August 31, 1978) 41
Deposition of Donald Finnegan (August 31, 1978) 43
Deposition of Levernon Hubbard (August 31, 1978) 44
Deposition of Donald Jahns (August 31, 1978) 45
Deposition of Frank Howald (August 31, 1978) 46
Deposition of Richard Eddington (August 31, 1978) 47
Deposition of Robert Haney (August 31, 1978) 49
Deposition of William Tank (August 31, 1978) 50
Deposition of Edward Stricklin (August 31, 1978) 51
Plaintiffs' Memorandum in Opposition to Defendants' Motions for Summary Judgment (January 31, 1979) 52
Affidavit of Ronald Bowman 54
Affidavit of Bobby Haney 55
Affidavit of Levernon Hubbard 57
Affidavit of Donald Finnegan 58
Affidavit of Harry Starkey 60
Opinion and Order of the United States District Court (Note) 62
Opinion and Order of the United States Court of Appeals for the Sixth Circuit (Note) 62

RELEVANT DOCKET ENTRIES OF THE UNITED STATES DISTRICT COURT—Case No. C 78-8

1- 6-78 Complaint fld

1- 6-78 Pltf. mo. for preliminary injunction, fld.

1-18-78 Ordered that the pltfs' motion for a preliminary inj. is overruled, filed. DJY Copies to Lackey and Gallon.

1-31-78 Ans. of def. International Brohd., fld. c.m.

3- 1-78 Deft. Leu Answer, filed. Copies served.

8-25-78 Deft. MOTION for summary judgment, filed. Attached memo. in support. Copies mailed.

8-31-78 MOTION of def. Harold Leu for summary judgment w/ attached memo in support, fld. cm.

3-30-79 OPINION AND ORDER of the Court, filed. DJY 77(d) copies mailed. Ordered that the motion of the deft. union for leave to file a reply brief is sustained, and the clerk shall file the previously lodged; f.o., that the motions of defts. for summary judgment are sustained and the clerk shall enter judgment in accordance.

3-30-79 JUDGMENT ON DECISION BY THE COURT, filed. Copies mailed. Ordered and adjudged that judgment is entered in favor of the defts. and the complaint is dismissed. (Exhibits in file in basement)

4-30-79 NOTICE OF APPEAL by Pltf. filed. Copies mld. by clerk to: Lackey, Bolotin, Schank, Allotta and Hasbrook. True copies of docket

entries and notice mld. to Sixth Circuit Court of Appeals.

8–19–81 ORDER of Sixth Circuit, filed 3-23-81. Judgment affirmed for reasons set forth in opinion of 3-30-79. Issued as MANDATE 8-17-81; Costs: None.

RELEVANT DOCKET ENTRIES OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT—Case No. 79-3415

7–17–79 Appeal Docketed

3–23–81 Order of the Sixth Circuit affirming the District Court

3–30–81 Judgment affirmed for reasons set forth in Opinion

8–17–81 Issued as Mandate

Case No. C 78-8

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

RAYMOND NAVARRO,

and

DONALD FINNEGAN,

and

JAMES ROOT,

and

EDWARD STRICKLIN,

and

WILLIAM TANK,

and

DON JAHNS,

and

LEVERNON HUBBARD,

and

CHARLES WINTERS,

and

DENVER PHILLIPS,

and

FRANK HOWALD,

and

RICHARD EDDINGTON,

and

HARRY STARKEY,

and

RON BOWMAN,

and

BOBBY HANEY,

and

JOHN CLARK,
Plaintiffs,

VS.

HAROLD D. LEU, Individually and in his capacity as President of INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 20,

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 20,
Defendants.

COMPLAINT

(Filed January 6, 1978)

Now come the Plaintiffs, by and through their attorneys, Green, Lackey, Newcomer and Harris, and for their cause of action state as follows:

1. This is an action to redress violations of the Labor-Management Reporting and Disclosure Act, 29 U.S.C.A., §§401, *et seq.*, Pub. L. 86-257, §2, Sept. 14, 1959, 73 Stat. 519. This Court has jurisdiction pursuant to 29 U.S.C.A. §412.

2. Plaintiffs are residents of this judicial district, citizens of the United States, and members in good standing

of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 20 (hereinafter Local No. 20) who were, until January 3, 1978, employed as appointed Business Agents for Local No. 20.

3. Defendant Harold Leu is the duly elected President of Local No. 20, who took office on January 1, 1978. Defendant Local No. 20 is a voluntary unincorporated association commonly known as a labor union.

4. In November, 1977, Local No. 20 had nominations of officers for its election scheduled for December 9, 10, 11 and 12, 1977. Two slates of candidates were nominated and sought election to union office. One slate was headed by Omar L. Brown, the other slate by Defendant Harold Leu.

5. Plaintiffs exercised their right to express their views on the candidates throughout the campaign for election of office and did so in support of the Omar L. Brown slate. As a result of the election, which took place on the aforementioned dates in December, Harold Leu was elected President of Local 20 and took office on January 1, 1978.

6. On January 3, 1978, on his first work day in office, Defendant Harold Leu summarily and without notice discharged from employment as Business Agent each of the Plaintiffs in this action for and as a result of their campaigning, expressions of support and voting for his opponents in the Local No. 20 officers election.

FIRST CAUSE OF ACTION

7. Plaintiffs incorporate and reallege the facts contained in Paragraphs 1 through 6 as set forth above.

8. Defendant Harold Leu's discharge of each of the Plaintiffs because of their expressions of support for Omar L. Brown in the Local No. 20 officers election infringes

upon Plaintiffs' equal right and privilege to vote in the election and participate in the deliberations of Local No. 20, which rights are protected by 29 U.S.C.A. §411(a)(1).

SECOND CAUSE OF ACTION

9. Plaintiffs incorporate and reallege the facts contained in Paragraphs 1 through 8 as set forth above.

10. Defendant Harold Leu's discharge of each of the Plaintiffs because of their support of Omar L. Brown in the Local 20 officers election violates Plaintiffs' right to freely meet and assemble with other members of Local No. 20 and express their views, arguments and opinions upon candidates in an election of Local No. 20 in violation of 29 U.S.C.A. §411(a)(2).

THIRD CAUSE OF ACTION

11. Plaintiffs incorporate and reallege the facts contained in Paragraphs 1 through 10 as set forth above.

12. Defendant Harold Leu's discharge of each of the Plaintiffs because of their support of Omar L. Brown in the Local No. 20 officers election is in fact discipline of Plaintiffs for exercising rights of free speech, assembly, voting and expression of views protected by 29 U.S.C.A. §411(a)(1) and (2), all of which is in violation of Title 29 U.S.C.A. §529.

13. That Plaintiff's and other members' rights guaranteed by law to free expression, assembly and the right to be free from discipline as a result of those expressions and assembly have been and will be chilled by Defendant Leu's action and thus they have been irreparably harmed and have no adequate remedy at law.

14. That Plaintiffs have filed internal union charges against Defendant Harold Leu but that no adequate and complete remedy exists under the Constitution and By-

Laws of either the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or Local No. 20 to adequately remedy Plaintiffs, and as a result of dissension within the local attempts at exhaustion would be futile.

15. That Defendant Harold Leu's action in summarily discharging the Plaintiffs for the sole reason that they expressed support for and voted for and on behalf of his opponent in the Local No. 20 election was willful, wanton and malicious.

WHEREFORE, Plaintiffs pray:

(1) That this Court accept jurisdiction of this cause;

(2) That the Court issue a preliminary order mandating that each of the Plaintiffs be immediately restored to his former position as Business Agent for Local No. 20 at the same wages and working conditions as they enjoyed before such unlawful discharge;

(3) That upon final hearing the preliminary order be made permanent;

(4) That Plaintiffs be accorded compensatory damages in the amount of their wage and benefit loss to the date of their restoration to their former positions, as well as damages for mental suffering and humiliation;

(5) That Plaintiffs recover of Harold Leu punitive damages in the amount of $150,000.00;

(6) That Plaintiffs be awarded attorney fees and costs of this action and such other relief as the Court deems just and proper in the premises.

Respectfully submitted,

GREEN, LACKEY, NEWCOMER & HARRIS
By: /s/ GERALD B. LACKEY/SSB
By: /s/ SAMUEL G. BOLOTIN

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

(Title omitted in printing)

TRANSCRIPT OF HEARING ON PRELIMINARY INJUNCTION

(Hearing Commenced January 17, 1978)

APPEARANCES:

GERALD LACKEY and SAM BOLOTIN,
In behalf of the Plaintiffs,

JACK GALLON and TED IORIO,
In behalf of the Defendants.

TRANSCRIPT OF HEARING ON PRELIMINARY INJUNCTION in the above-entitled cause of action, before the Hon. Don J. Young, on Tuesday, January 17, 1978.

* * * * *

[16] PLAINTIFFS' EVIDENCE

THEREUPON, the plaintiffs called as a witness, MR. DANIEL G. FARBROTHER who, having been previously duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

By Mr. Lackey:

* * * * *

[18] Q. When was the first significant contest in a Local 20 election, to the best of your recollection? A. I believe it was 1974.

Q. Can you tell us who the top protagonists in that election were, please? A. The two contestants for the president's position was Omar Brown and Harold Leu.

Q. Who won the election in 1974? A. Mr. Leu.

Q. By how many votes, if you remember? A. By approximately forty or fifty some votes. It is in that neighborhood. I don't recall the exact figure.

Q. What happened after that election? A. There was charges filed by Mr. Brown. The International investigated and another election took [19] place in September, 1975.

Q. And who were the contestants at that time? A. Mr. Brown and Mr. Leu again.

Q. Who won that election? A. Mr. Brown.

Q. By how many votes? A. By about five hundred, I believe.

Q. In September, 1975? A. Yes, correct.

Q. Was that a hotly-contested election campaign as well? A. Yes, it was.

Q. Now, there was a more recent election, in December, 1977, was there not? A. That is correct.

Q. And the same two persons, Mr. Brown and Mr. Leu, were running for the presidency of Local 20? A. They had the slates, that is correct.

Q. Was that a vigorously conducted election? A. Yes, that was.

Q. There was a lot of electioneering on both sides? A. That is correct.

* * * * *

[20] Q. Now, you testified that since November, 1976, you were the administrative assistant to Mr. Brown, who was then president of Local 20? A. That is correct.

Q. What were your duties in that position? A. My duties consisted of handling the day in and [21] day out

activities of the business agents and to assist and direct them in their negotiations, the handling of their problems. It is the daily administrative duties.

Q. Approximately how many business agents were there employed by Local 20 during the time you were administrative assistant? A. I would say in the neighborhood of seventeen.

Q. How do you become a business agent of Local 20? A. He is appointed by the president.

Q. Now, business agents are full time, paid positions of the local union? A. That is correct.

Q. Now, is it fair to say that at least from and since November, 1976, it would be you that would know as much about the work practices and abilities of business agents than any other person in the local? A. I would assume that to be a correct statement.

Q. Prior to January 3, 1978, were you ever approached by the Defendant Leu and asked about any of the work habits or performance of any of the business agents of Teamsters' Local 20? A. No.

Q. Between the time of the election, which I understand to have been from December 9 through 12, 1977, [22] is that correct? A. Yes.

Q. Between the time of the election and the time that the results were finally announced were there staff meetings of the Teamsters' Local 20 business agents staff? A. Yes. There was a weekly staff meeting held, and that was the practice under Mr. Brown's administration and everybody's administrations at Local 20 to have weekly staff meetings, and there were meetings in December through the elections, prior to and after.

Q. Was one of your functions as administrative assistant to the president to chair the staff meetings? A. Yes, the overwhelming number of them are chaired by myself.

Q. Between December 9, 10, 11 and 12, 1977, and the time when the official results of the election were announced, which was somewhere around December 29th, is that correct? A. That is correct.

Q. Was there any discussion in staff meetings by you or others regarding the continued employment by Local 20 of the business agents? A. Yes, on more than one occasion we had asked the staff that regardless of the outcome of the election [23] that they stay on and serve the local union, and Mr. Brown at a staff meeting, that he also conducted, made a personal request to these people to stay on and serve the local union, and he asked them to break any political ties they had so that they could do their jobs better because he felt the most important job was to serve the membership of Local 20.

Q. Did you attend the staff meeting on January 3, 1978? A. Yes, I did.

Mr. Lackey: May we get a stipulation that at the staff meeting the plaintiffs were summarily discharged by President Leu?

Mr. Gallon: We have a verbatim transcript of what was said, prepared by the secretary to Omar Brown. We would be willing to stipulate that was everything said.

Mr. Lackey: I asked you whether or not you would stipulate that that the plaintiffs were summarily discharged.

* * * * *

[24] Q. (Continuing) Mr. Farbrother, can you tell us what occurred at that meeting? We have a stipulation now. Can you tell us whether or not Mr. Leu offered any reasons for the summary discharge of the business agents? A. I can't recall everything. Some of the things that do stand out in my mind was that Mr. Leu indicated

to the staff that he was terminating them; that during the campaign there were things that had been put in flyers and leaflets which apparently had an effect on him and his family; that no one had ever come to him and said it was not true; that he felt that their allegiance was to Brown in the campaign. He commended them on it, but he felt that their loyalty was to Mr. Brown and felt that they couldn't fulfill his policies and his programs, and so, you know, they couldn't work into his plan. I mean there were a lot of other things said, too, but to me that is the sum and substance of what went on.

* * * * *

[28] CROSS EXAMINATION

By Mr. Gallon:

* * * * *

[30] Q. Aren't these various employers and members of the union continuously coming to the union with problems they have under these contracts? A. That is correct.

Q. Isn't it the first purpose of the business agent to carry out those duties, that is, to try to satisfy the various problems or resolve the various problems which these members raise? A. That is correct.

Q. And isn't it the president and only the president as the chief executive who decides who supervises these business agents? A. Not in accordance with—I think if you want to put the ultimate as to who is or who has the responsibility, yes, but the administrative assistant—

Q. (Interposing) I meant that he is the ultimate supervisor. A. Yes, I agree.

Q. And he sets the policies as to the business agents as to where they will work, correct? A. Yes.

Q. Isn't he under the constitution—he alone—[31] the only one who can sign contracts in behalf of the local? A. Yes.

Q. He directs which business agents to negotiate which contracts? A. Yes.

Q. Doesn't he give the final approval after the contracts have been concluded as to what provisions must be in these contracts? A. That is true.

* * * * *

[32] Q. The other great enterprise of the union is organizing the unorganized? A. Yes.

Q. Is that officially under the control of the president? A. Yes.

Q. Doesn't he supervise the business agents and decide the policies in regard to organizing? A. That is correct.

Q. These various duties of the business agents that we have talked about—carrying out the policies of the president and so on—from your experience, having worked under four different presidents, hasn't [33] it always been historically true in this union that it it important that the business agents support the president and his policies? A. That is correct.

Q. And if a business agent does not support the president he is not there anymore, is he? A. I can't recall of anybody being discharged.

* * * * *

Q. So it was clearly understood by each of these business agents that you supervised that they hold their jobs as business agents as long as they satisfied the president? A. Yes, I would have to say that is true, because they have one job to do and that is to serve the membership, and it is the goal of the president to do the best for the membership.

Q. Am I correct that one of the main issues in the recently completed, very active campaign was Harold [34] Leu's allegation that the membership were not getting proper service as members of the union? A. That was his position.

Q. Wasn't that his platform? A. Yes.

Q. And didn't he indicate in his campaign literature that if elected president he would make sure that the members did get good service? A. That is correct.

Q. Now, to your knowledge did any of the plaintiffs ever come up to Harold Leu and say to him, "We can be loyal; we can work for you; we can put in the policies you want us to put in"? A. Not to my knowledge.

* * * * *

[38] Q. And haven't you seen the various plaintiffs since their discharge coming in and out of the building and going into and out of that office? A. Some of them have, yes.

Q. Haven't you been aware of the fact that these plaintiffs have been traveling to their former jobs they had when they were business agents getting petitions signed by members trying to set up a new election? A. I am aware of that.

* * * * *

Q. Am I correct that during the last campaign you were an Omar Brown supporter? A. That is correct.

Q. And also Donald Sarver, was he not an Omar Brown [39] supporter? A. That is correct.

Q. And also Jimmy Cassidy, was he also a Brown supporter? A. That is correct.

Q. Weren't these three people business agents at the time under Omar Brown? A. Yes.

Q. They have been retained as business agents? A. That is correct.

Q. Isn't there also a Local 20 employee in the Bryan office of Local 20? A. Yes.

Q. And that employee is still there? A. Yes.

* * * * *

Q. And was there also another employee by the name of Mary Jane Gill who was employed by either the joint council or Local 20? A. By Local 20.

Q. And she is still there as an employee of Local 20? [40] A. That is correct.

* * * * *

[44] Q. (Continuing) At this meeting you attended on January 3rd isn't it true that Harold Leu stated at that meeting that he had run on a campaign seeking to have better representation for the membership? A. That could be.

Q. And didn't he say that if Brown had done his job he would be in and not out? A. That is correct.

Q. And didn't he indicate that he was going to hire a team that would be loyal to him? A. That is correct.

Q. And didn't he at that meeting indicate that he wanted to have with him as business agents those who had worked during the campaign and found out what the problems were and what the members wanted, or words to that effect? A. Well, I don't believe—the only difference there is I don't believe that they were aware of the problems. He said he was aware of the problems.

* * * * *

[48] RE-DIRECT EXAMINATION

By Mr. Lackey:

* * * * *

Q. Are the plaintiffs in this case the people who were terminated by Mr. Leu on January 3rd, do they continue to remain members in good standing of Local 20? A. Yes.

* * * * *

[51] Q. Now, two of the plaintiffs in this case, Mr. Starkey and Jim Root, were both elected officers of Local 20 in the December, 1977, election, were they not? A. Yes.

Q. Can you tell us to what offices they were elected?

* * * * *

A. Mr. James Root was elected vice-president of Teamsters' Local 20, and Mr. Starkey was elected to one of the trustee positions.

Q. Prior to January 3rd both of them were appointed business agents? A. Yes, full time business agents.

Q. And after January 3rd they were terminated [52] along with the other plaintiffs. A. That is correct.

* * * * *

[54] RE-CROSS EXAMINATION

By Mr. Gallon:

* * * * *

Q. Now, you indicated that the various plaintiffs, that those that were not officials or officers were discharged on January 3rd. Am I correct that since that time these plaintiffs have been treated like any other member; they have been denied no rights of membership to your knowledge? A. Not to my knowledge.

* * * * *

[55] Q. You indicated that there were two elected officers who were also business agents and plaintiffs, Mr. Root and Mr. Starkey; am I correct about that? A. Yes.

Q. Since they have been discharged as business agents have they been treated any different than any other officer? A. Not to my knowledge.

* * * * *

[58] THEREUPON, the Plaintiffs called as a witness, MR. DENVER PHILLIPS, who, having been previously duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

By Mr. Lackey:

Q. Your name and address, please. A. Denver Phillips, Route 5, Bryan, Ohio.

Q. Where are you employed? A. Now?

Q. Yes. A. Nowhere.

Q. Prior to January 3rd where were you employed? A. Teamsters' Local 20.

Q. What was your position there? A. As business agent.

Q. How long had you been so employed? A. Since September, 1975, approximately two and a half years.

Q. Now, Mr. Phillips, can you recall January 3, 1978, and the events of that day? A. Yes, I can.

Q. Can you tell us briefly what happened on that day, to the best of your recollection? A. Well, I arrived at the Bryan office, which I [59] work out of, at eight o'clock and I received a phone call from Toledo stating that I was wanted in Toledo for a meeting at eight-thirty. Well, it was impossible to be there by eight-thirty, so I got in the car and I got to Toledo at about nine-fifteen or nine-thirty. The meeting was over at that time.

Q. What meeting was that? A. That was a staff meeting. That's all I knew. I have no idea what the meeting was for. It is just that at various times in the last two and a half years Mr. Brown would call and say, "We have a meeting" and I would go, and I didn't see that there would be any difference in Mr. Leu.

Q. What happened then? A. I seen some of the other agents there. I said, "What is going on?" They said, "Mr. Leu wants to see you." I found him on the hallway stairs by Dan Farbrother's office. He and I went into Mr. Farbrother's office, closed the door, and there was a little chitchat. Then he said, "You're fired." I said, "Why?" He said, "You're too loyal to Omar Brown."

* * * * *

[60] CROSS EXAMINATION

By Mr. Gallon:

* * * * *

Q. Isn't it true that subsequent to that meeting you have been, as a member of the union, going into various shops in the Bryan area to talk to members of the union?

* * * * *

[61] A. You mean since January 3rd?

Q. Yes. A. Yes, I have.

* * * * *

Q. But the union has not interfered with your activities going in and out of shops and talking to other union members? A. No.

Q. And you have been in the Teamsters' building in Toledo and Bryan? A. Yes.

Q. And no one has interfered with that right to have meetings with other plaintiffs or other members of the union? A. No.

* * * * *

[64] THEREUPON, the Plaintiffs called as a witness, MR. HARRY STARKEY, who, having been previously duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

By Mr. Lackey:

Q. Would you state your name and address, please, to the court? A. Harry Starkey, Oregon, Ohio.

Q. Are you presently employed? A. No.

Q. Prior to January 3rd were you employed? A. Yes.

Q. In what capacity? A. As business agent for Local 20.

Q. For how many years were you such business agent? A. I worked there about eight months of 1974, and almost two and a half years when Mr. Brown got elected.

Q. Do you also have an elected position in Local 20? A. Yes.

Q. As what? A. As trustee.

[65] Q. Calling your attention to January 3rd, Mr. Starkey, can you briefly tell the Court what occurred to you on the morning of January 3rd, if anything? A. Well, the morning of January 3rd, I went to the Fremont Office early in the morning.

Q. On your regular business? A. Yes, and we got a call on the radio and by phone to come back to Toledo.

Q. Did you do that? A. Yes; we got back a little after ten o'clock.

Q. Who is "we"? A. Charles Winters and myself worked out of Fremont.

Q. What did you find when you got to Toledo? A. We walked into the building and there was a lot of our friends and associates on hand. We asked them what was

going on. One guy said, "Go on into the library and he will talk to you." We went into the library.

Q. Who is "we"? A. Charlie, myself and I think Denver went into the library, and Don Sarver came in the library.

Q. Did you talk with Mr. Leu that morning? A. Yes. I ran into him in the hall and we went in the attorney's office and he told me I was fired.

Q. Is that all he said? [66] A. Well, he says, "I know you are a Brown supporter and you are true to Brown, and I am terminating you."

* * * * *

CROSS EXAMINATION

By Mr. Gallon:

* * * * *

Q. Didn't you say to him that you didn't blame him, that you probably would have done the same thing if you had been in his position? A. I might have said that, yes.

* * * * *

Q. Didn't you understand that the appointed office you had was held at the pleasure of the president? A. That is true.

* * * * *

[67] Q. Since your discharge nobody has interfered with your ability to come and go into the building of the teamsters? A. No.

Q. And you have been able to talk to other members? A. Yes.

Q. Haven't you been active in objecting to the election that just took place? A. Definitely.

Q. And talking to members about it? A. Yes.

Q. And getting petitions signed? A. Yes.

Q. And your discharge did not interfere with that? A. No.

* * * * *

[70] THEREUPON, the plaintiffs called as a witness, MR. RAYMOND NAVARRO, who, having been previously duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

By Mr. Lackey:

Q. Your name and address, please. A. Raymond Navarro, 1120 Yates, Toledo.

Q. Are you unemployed as of today? A. Yes.

Q. Prior to January 3rd, where were you employed? A. Teamsters' Local 20.

Q. And prior to that where were you employed? A. Interstate Motor Freight.

Q. How long have you been a business agent, or how long were you a business agent for Local 20? A. Since September, 1975.

Q. Were you able as business agent to preserve your seniority rights with Interstate Motor Freight? A. No, I was not.

Q. So you may not go back to Interstate Motor Freight with your accumulated seniority, is that right? A. Correct.

Q. Can you tell us what happened on January 3rd? A. I got to the hall about seven-fifteen or so. [71] I had some paper work to do. Harold had come in. I don't know who told me, but somebody said there would be a staff meeting at eight-thirty. It came on the intercom. So I went to the staff meeting.

Q. What did you see or find there? A. There were different people I knew as members there. Harold took the platform and told us we was all terminated.

Q. Did he assign reasons for the termination? A. Verbatim I can't tell you, but he said that during the campaign no one had contacted him personally and his family had been hurt by it.

He went on to say that he knew that we was all loyal to Omar and therefore he was going to terminate us. He said he had to surround himself with people who were going to be loyal to him, and he pointed out people to my right.

Q. Is that the extent of your conversation with Mr. Leu? A. Yes.

Q. Is that the extent of your conversation with Mr. Leu throughout the entire campaign? A. I had a conversation with him another time, and he told me at that time he heard that I was doing a good job and he wanted me to keep it up. I thanked [72] him for it.

Q. Did you campaign on behalf of Omar Brown? A. Yes, I did.

* * * * *

CROSS EXAMINATION

By Mr. Gallon:

* * * * *

[73] Q. Isn't it true that Harold Leu made a big point about the fact that he was there because he was able to convince a majority of the members that they were not given good representation before? A. Something like that, yes.

Q. And didn't he indicate that he was obligated to give to the membership the best representation that he could? A. Yes.

Q. And did you go up to Leu afterward to indicate to him that you thought you could carry out his policies? A. No, I did not.

* * * * *

[75] DEFENDANTS' EVIDENCE

THEREUPON, the Defendants called as a witness, MR. HAROLD LEU, who, having been previously duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

By Mr. Gallon:

Q. Would you please give the Court your name and address? A. Harold Leu, 600 Lynwood, Delta, Ohio.

Q. By who are you employed? A. Teamsters' Local 20.

Q. In what capacity? A. President.

* * * * *

[77] Q. (Continuing) Did you have occasion while you were a candidate to observe the job being done by the various business agents for Omar Brown? A. Yes, I did.

Q. During that campaign did you make any campaign promises as to what you would do if you were elected? A. Yes.

Q. What was your chief issue in that campaign? A. Service and representation to the members.

* * * * *

[79] Q. When you were in the union hall did you observe what the business agents were doing who were not officers of the union? A. Yes, I did.

Q. What were they doing? [80] A. Every time—not every time, but most of the time I was going from one end of the hall to the other. When we took a break to get a cup of coffee the business agents and staff members of Local 20 were constantly in the building, and the officers were congregated in the rooms carrying on conversations.

* * * * *

Q. Yes. Is that what they normally do? A. In my opinion, no.

Q. What do they normally do? A. The business agent is to be in the field representing the members, taking care of the problems.

Q. And did you arrive at a decision prior to January 3rd as to which business agents you would keep and which you would not keep? [81] A. I did.

Q. What criteria did you use? A. Based on experience, based on their ability to work under the president of Local 20, being myself, and also based on many activities in the past 2 years I became directly involved with members of Local 20.

Q. What were the reasons why you discharged the plaintiffs? A. Several reasons. As I tried to explain to them, I respected their loyalty and the campaign activity that they did for Omar Brown, but since I was elected president experience and loyalty were what I needed to perform the services and follow through with the campaign commitments that I made to the membership regarding service and representation, that I was convinced and made the decision that they could not hold their jobs.

Q. Is that what you advised them on January 3rd? A. Yes. I told them that there was nothing personal in it, that I expected them to follow any procedure that they were entitled to as members of the union, and I hoped they would not take it personal.

Q. Do you remember a conversation on January 3rd with Denver Phillips? A. Some of it, yes.

Q. You heard him testify today; is that an accurate [82] description of what you told him on January 3rd? A. There was more to it than what I heard.

Q. What did you say, to your recollection? A. I tried to explain to Mr. Phillips the reasons why. This was in the area of non-representation, in the area of not being able to follow me as a loyal business agent and an employee of the union, and based on that I did not need him as a business agent, that he would receive pay for another week, and his welfare would remain, and that was it.

Q. Did you talk with Mr. Starkey? A. Yes.

Q. You heard him testify here? A. Yes.

Q. Did he give an accurate representation of what you said to him? A. Except for the fact that he again did not—I did not hear him say that I did explain in detail the campaign, the issue of representation, and I did not feel that he could represent the people properly under my leadership.

Q. How about Ray Navarro, did you speak with him? A. Only at the staff meeting.

* * * * *

[83] CROSS EXAMINATION

By Mr. Lackey:

Q. Mr. Leu, after your defeat to Omar Brown in December, 1975, you were not fired by Mr. Brown, were you? A. Absolutely not.

Q. In other words, you were just not hired by him as a business agent, is that correct? A. The president is automatically eliminated upon the loss of an election.

Q. So you held no position from which to be fired after you lost the 1975 election, right? A. Yes.

Q. The fact is Omar Brown did not fire any business agent formerly employed by you when you were president, is that correct? A. That is correct.

* * * * *

[84] Q. And it was clear to you that the business agents employed by President Brown were supporting him for the presidency of Local 20? A. Yes.

* * * * *

[90] Q. Were those records having to do with the qualifications of the business agents you discharged on January 3rd? Did you ever ask for any records about their qualifications? A. No sir.

Q. You don't deny, do you, Mr. Leu, that in the meeting of January 3rd, the staff meeting where you terminated these employees—did you advise those business agents you terminated that you were upset because a lot of things were said during the campaign, and they never came to you and said, "Well, that is just campaigning," and do you remember saying that it hurt your family? [91] A. Words to that effect, yes.

Q. And do you remember saying, "There is no way you can work with my staff or you can work with me as president feeling as you do"; do you remember that? A. No.

Q. You don't remember saying, "But in the meantime there is no way possible you can work with my parties, and there is a winner and there is a loser"; do you remember saying those words? A. Not verbatim, no.

Q. Do you remember saying words to that effect? A. No sir. Well, to that effect. I will have to correct my answer; to that effect, yes.

Q. Do you remember saying as well that you are going to need to be surrounded by people who can work

under you and be loyal to you; do you remember those words, words to that effect? A. Yes.

Q. Now, most of the people you replaced had at least two years as business agents; is it fair to say that, Mr. Leu? A. Yes.

* * * * *

[92] Q. Is it your testimony today that you did not [93] have the second conversation with Ray Navarro other than the one on January 3rd with regard to his abilities as a business agent; is this your testimony today? A. You know, to my recollection I had talked to Ray, but whether I said to him those exact words I can't remember.

* * * * *

Q. Does he represent the members as you would expect a business agent to represent the members? A. Not under my request and not under my responsibilities as president, no.

Q. How would he be different under your administration? What would he do differently than he was doing when he was a business agent for Mr. Brown?

* * * * *

[94] A. He would be responsible to me as the president to follow the instructions of the business agents along the lines of reporting, along the lines of answering phone calls, along the lines of resolving grievances, and over the past two and a half years I have had many occasions where grievances have not been processed quickly and properly, related to me by members of Local 20 regarding this particular management.

* * * * *

[96] REBUTTAL EVIDENCE

THEREUPON, the plaintiffs called as a witness on rebuttal, MR. DANIEL G. FARBROTHER, who, having been previously duly sworn by the Clerk, testified further as follows:

DIRECT EXAMINATION

By Mr. Lackey:

Q. Mr. Farbrother, in your capacity as administrative assistant to President Brown when he was president of Local 20 you testified that you had day-to-day contact with the business agents who are plaintiffs in this lawsuit today? A. That is correct.

Q. Are you aware of any arrangements that they may have made with their previous employers so that in the event of their termination of employment at Local 20 they could go back to their former employment? A. Out of the entire group there was only four of them that were able to return to their former positions because of being able to maintain a leave of absence, and the remainder have no jobs and must seek employment somewhere else.

* * * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

(Title Omitted in Printing)

ANSWER

(Filed January 31, 1978)

Now comes the defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 20 (hereinafter Local 20), answering plaintiffs' Complaint. Wherefore, this responsive pleading shall be numbered 1 through 15 to correspond with the paragraphs of the Complaint. The defendant denies generally all of the averments. Specifically, the defendant asserts the following:

1. Admits that the Complaint purports to redress a violation of the Labor-Management Reporting and Disclosure Act, 29 U.S.C.A. Section 401, et seq., Pub. L. 86-257, section 2, Sept. 14, 1959, 73 Stat. 519. Denies that the defendants violated any of the federal statutes referred to herein. Denies that this Court has jurisdiction over this matter.

2. Admits the allegations contained in the Second paragraph of the Complaint.

3. Admits the allegations contained in the Third paragraph of the Complaint.

4. Admits the allegations contained in the Fourth paragraph of the Complaint.

5. Admits that Harold Leu was duly elected President of Local 20 and took office on January 1, 1978. Denies

the remainder of the Fifth paragraph for want of sufficient knowledge.

6. Admits that Harold Leu discharged from employment as business agents each of the plaintiffs. Denies the other allegations in the Sixth paragraph.

7. Admits that the plaintiff incorporates and realleges the paragraphs 1 through 6 of their Complaint. Defendant preserves all of the above stated denials and defenses in paragraphs 1 through 6.

8. Denies the averments and allegations proffered in the eighth paragraph of the Complaint.

9. Admits that the plaintiffs incorporate and realleges the paragraphs 1 through 8 of their Complaint. Defendant preserves all of the above stated denials and defenses in paragraphs 1 through 8.

10. Denies averments and allegations proffered in the tenth paragraph of the Complaint.

11. Admits that the plaintiffs incorporate and reallege the paragraphs 1 through 10 of their Complaint. Defendants preserve all of the above stated denials and defenses in paragraphs 1 through 10.

12. Denies the averments and allegations proffered in the twelfth paragraph of the Complaint.

13. Denies the averments and allegations proffered in the thirteenth paragraph of the Complaint.

14. Admits that the plaintiffs have filed internal union charges. Denies that an adequate and complete remedy could not exist under the Constitution and By-Laws of either the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or Local 20.

15. Denies the averments and allegations proffered in the fifteenth paragraph of the Complaint.

FIRST AFFIRMATIVE DEFENSE

16. Adopts by reference as if the same were fully rewritten herein the admissions, denials and averments of paragraphs one through fifteen.

17. Aver that the Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

18. Adopts by reference as if the same were fully rewritten herein the admissions, denials and averments of paragraphs one through seventeen.

19. Aver that this Court lacks jurisdiction over the subject matter of this action.

THIRD AFFIRMATIVE DEFENSE

20. Adopts by reference as if the same were fully rewritten herein the admissions, denials, and averments of paragraphs one through nineteen.

21. Aver that there is a misjoinder of parties defendant.

FOURTH AFFIRMATIVE DEFENSE

22. Adopts by reference as if the same were fully rewritten herein the admissions, denials and averments of paragraphs one through twenty-one.

23. Aver that there is a misjoinder of parties plaintiff.

FIFTH AFFIRMATIVE DEFENSE

24. Adopts by reference as if the same were fully rewritten herein the admissions, denials, and averments of paragraphs 1 through 23.

25. Aver that the plaintiffs can not maintain a cause of action in this Court until they exhaust their internal union remedies.

SIXTH AFFIRMATIVE DEFENSE

26. Adopts by reference as if the same were fully rewritten herein the admissions, denials, and averments of paragraphs 1 through 25.

27. Injunctive relief is improper since there is an adequate remedy at law available, if the plaintiffs are entitled to any remedy at all.

SEVENTH AFFIRMATIVE DEFENSE

28. Adopts by reference as if the same were fully rewritten herein the admissions, denials, and averments of paragraphs 1 through 27.

29. There are no grounds to support this action.

WHEREFORE, defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 20, prays that the Complaint be dismissed with prejudice, that the plaintiffs' demands for relief be denied in their entirety and that the Court enter Judgment for the defendant including costs herein expended including attorney fees, and for such other relief as the Court deems to be just and proper.

Respectfully submitted,

GALLON, KALNIZ & IORIO CO., LPA
By /s/ JACK GALLON
By TED IORIO
By /s/ JOSEPH J. ALLOTTA
By /s/ JEFFREY JULIUS

IN THE FEDERAL DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

(Title Omitted in Printing)

MOTION FOR SUMMARY JUDGMENT OF LOCAL 20

(Filed August 25, 1978)

Now comes defendant International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 20, by and through its attorney, GALLON, KALNIZ & IORIO CO., L.P.A., and respectfully moves for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure on the ground that there exists no material issue of fact and defendant is entitled to summary judgment as a matter of law. This motion is supported by the attached memorandum in support and the depositions of plaintiffs.

Respectfully submitted,

GALLON, KALNIZ & IORIO CO., L.P.A.
By /s/ JOSEPH J. ALLOTTA
3161 N. Republic Boulevard
Toledo, Ohio 43615
419 535-1976

AFFIDAVIT OF HAROLD D. LEU

STATE OF OHIO)
) SS:
COUNTY OF LUCAS)

I, Harold D. Leu, being first duly sworn depose and say from personal knowledge:

1. that I am President of International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Local Union No. 20;

2. that I removed all plaintiffs in the above-captioned matter from their appointive positions on January 3, 1978 as business agents from IBT Local 20 for the reason that plaintiffs refused to support my presidency and its programs;

3. that plaintiffs Root and Navarro have since the institution of the above-captioned matter indicated to the affiant that they are now willing to support the policies and programs of my administration;

4. that the affiant has appointed plaintiffs Root and Navarro as business agents for IBT Local 20 as a result of this showing of their willingness to support my administration.

Further affiant sayeth not.

/s/ HAROLD D. LEU

Sworn before me and subscribed in my presence this 24 day of August, 1978.

/s/ RAY S. SINNES
Notary Public

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

(Title omitted in printing)

MOTION FOR SUMMARY JUDGMENT OF OF HAROLD LEU

(Filed August 31, 1979)

Now comes defendant Harold Leu, by and through his attorney, Richard Hasbrook, and respectfully moves for summary judgment in this case pursuant to Rule 56 of the Federal Rules of Civil Procedure on the ground that there exists no material issue of fact and defendant is therefore entitled to summary judgment as a matter of law. This motion is supported by the depositions of plaintiffs and the attached memorandum in support.

Respectfully submitted,

RICHARD HASBROOK

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

(Title Omitted in Printing)

DEPOSITION OF RAYMOND NAVARRO

(Filed August 31, 1978)

Deposition of RAYMOND NAVARRO, a Plaintiff herein, called by the Defendants as if upon Cross Examination under the Federal Rules of Civil Procedure, taken before me, the undersigned, Kathleen M. Carey, a Notary Public within and for the State of Ohio, pursuant to agreement and stipulations of Counsel hereinafter set forth, at the offices of Gallon, Kalniz & Iorio, 3161 North Republic Boulevard, Toledo, Ohio, on Wednesday, February 15, 1978, at 10:15 o'clock a.m.

* * * * *

[4] CROSS EXAMINATION

By Mr. Allotta:

* * * * *

[61] Q. Have you been prevented from discussing any matters or any policies with any Teamster members? A. What do you mean?

Q. When you indicated you had some discussions with people coming in and phone calls and things like that, has anyone told you— A. I didn't say I was taking care of the problems.

Q. I realize that. Has anyone prevented you from talking with another Teamster Local 20 member? A. No.

*

Q. Have you been in the Union Hall since January 3, 1978? A. Plenty of times.

Q. And what was the reasons that you went into the Union Hall? A. I got a lot of friends there. Take care of business at the Credit Union, dues office, insurance.

Q. Were you ever prevented from going into the Union Hall? A. No.

[62] Q. Have you met with other Local 20 members at the Union Hall? A. What do you mean have I met with them?

Q. You said you've been there plenty of times. Have you ever met with other Local 20 people when you were in the Union Hall? A. Sure have.

Q. Were you ever prevented from meeting with any of them? A. No.

Q. Have you voiced your opinion on the individuals who are now the officers of Local 20? A. Yes, I have.

Q. Have you ever been prevented from voicing your opinions? A. Nope.

Q. Do you believe the present officers are performing their duties properly?

Mr. Bolotin: Objection. You may answer.

A. Some.

Q. Which ones ? A. Officers?

* * * * *

[65] Q. Others, but you may not recall names? A. Correct.

Q. Have you been prevented from circulating those petitions? A. No.

Q. Have other members of Local 20 signed those petitions? A. Yes, they have.

Q. Have they been prevented from signing the petitions? A. To the best of my knowledge, no.

Q. What do you do with the petitions after you have them signed? A. Mail them.

Q. Excuse me? A. Mail them.

Q. To where? A. Presser's office in Cleveland.

Q. Do you personally mail them, or do you give them to somebody else? A. I personally mail them.

* * * * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

(Title omitted in printing)

DEPOSITION OF DENVER PHILLIPS

(Filed August 31, 1978)

Excerpt of the deposition of DENVER PHILLIPS, a Plaintiff herein, called by the Defendants as if upon Cross Examination under the Federal Rules of Civil Procedure, taken before me, the undersigned, Christine A. Ardley, a Notary Public in and for the State of Ohio, at the offices of Gallon, Kalniz & Iorio, 3161 North Republic Boulevard, Toledo, Ohio, on Wednesday, April 12, 1978, at 11:25 o'clock a.m.

* * * * *

[2] CROSS EXAMINATION

By Mr. Allotta:

* * * * *

[8] Q. Now, were you elected or appointed to the position as Business Agent? A. I was appointed.

Q. By Mr. Brown? A. Yes.

* * * * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

(Title omitted in printing)

DEPOSITION OF CHARLES WINTERS

(Filed August 31, 1978)

Excerpt of the deposition of CHARLES WINTERS, a Plaintiff herein, called by the Defendants as if upon Cross Examination under the Federal Rules of Civil Procedure, taken before me, the undersigned, Christine A. Ardley, a Notary Public in and for the State of Ohio, at the offices of Gallon, Kalniz & Iorio, 3161 North Republic Boulevard, Toledo, Ohio, on Wednesday, April 12, 1978, at 9:05 o'clock a.m.

• • • • •

[2] CROSS EXAMINATION

By Mr. Allotta:

• • • • •

[13] Q. Were you elected as a Business Agent? A. No, appointed.

Q. By Mr. Brown? A. By Mr. Brown.

• • • • •

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

(Title omitted in printing)

DEPOSITION OF RONALD BOWMAN

(Filed August 31, 1978)

Partial deposition of RONALD BOWMAN, a Plaintiff herein, called by the Defendant as if upon Cross Examination, under the Federal Rules of Civil Procedure, taken before me, the undersigned, Kimberlee A. Collins, a Notary Public in and for the State of Ohio, pursuant to stipulations of Counsel as hereinafter set forth, at the offices of Gallon, Kalniz & Iorio, 3161 North Republic Boulevard, Toledo, Ohio, on Friday, April 7, 1978, at 9:05 o'clock a.m.

* * * * *

[2] CROSS EXAMINATION

By Mr. Allotta:

* * * * *

[4] Q. Were you elected as a Business Agent? A. No.

Q. Mr. Brown appointed you? A. Yes.

* * * * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

(Title omitted in printing)

DEPOSITION OF JOHN CLARK

(Filed August 31, 1978)

Partial deposition of JOHN CLARK, a Plaintiff herein, called by the Defendants as if upon Cross Examination, under the Federal Rules of Civil Procedure, taken before me, the undersigned, Kimberlee A. Collins, a Notary Public in and for the State of Ohio, pursuant to stipulations of Counsel as hereinafter set forth, at the offices of Gallon, Kalniz & Iorio, 3161 North Republic Boulevard, Toledo, Ohio, on Wednesday, April 5, 1978, at 11:35 o'clock a.m.

* * * * *

[2] CROSS EXAMINATION

By Mr. Allotta:

* * * * *

[4] Q. Did you become a member of the Teamsters blood bank? A. Yes.

Q. Do you remember approximately when that was? A. I believe it was in December of '76.

Q. Are you still a member? A. Yes, as far as I know. As far as I know.

Q. Did you make use of the legal defense fund while you were employed by the City of Toledo? A. I don't think I had an opportunity to use it.

Q. Were you prevented from using it? A. No.

Q. So then your next employment was as a Business Agent for Local 20 beginning on July 11th, 1977, correct? A. Right.

Q. Okay. How did your becoming a Business Agent occur? A. What do you mean?

Q. When were you first approached about it? [5] A. Oh, I'd say early '77.

Q. Who approached you? A. Omar Brown.

Q. What was the conversation, or what did you talk about when you first started thinking—when he first approached you about being a Business Agent? A. Well, he told me he was expanding the organizing department, and he thought about putting me in as an organizer.

Q. What was your reaction or response to that? A. That I might be glad to do the job, and I'd do the job to the best of my ability.

Q. Then did anything else come of it? I mean, did any other events occur before July 11th? A. No, not really.

Q. You didn't have too many other conversations about it? A. No.

* * * * *

[10] Q. Now, when you first began in July, in that period of time, as you were an organizer, that's all you did. In other words, you didn't handle any grievances or meetings with employers that had Local 20 representatives already? A. No, I didn't.

Q. When you first began in July, were you elected or appointed? A. Appointed.

* * * * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

(Title omitted in printing)

DEPOSITION OF DONALD FINNEGAN

(Filed August 31, 1978)

Partial deposition of DONALD FINNEGAN, a Plaintiff herein, called by the Defendants as if upon Cross Examination, under the Federal Rules of Civil Procedure, taken before me, the undersigned, Kimberlee A. Collins, a Notary Public in and for the State of Ohio, pursuant to stipulations of Counsel as hereinafter set forth, at the offices of Gallon, Kalniz & Iorio, 3161 North Republic Boulevard, Toledo, Ohio, on Wednesday, April 5, 1978, at 9:05 o'clock a.m.

* * * * *

[2] CROSS EXAMINATION

By Mr. Allotta:

* * * * *

[5] Q. Was he the Business Agent the entire time? A. That's correct.

Q. Did you fill out any application to be selected as a Business Agent? A. I did.

Q. Is that application one of the records at the Union Hall? A. It should be.

Q. When approximately did you fill out the application? A. Approximately July or August of that year when we saw that Mr. Brown had a pretty good chance of winning the election.

Q. So that was prior to the actual results of the election? A. That's correct.

Q. The second one. A. Mr. Brown was screening some people prior to the final results of the election trying to get all of his ducks in a row so that if he was elected he'd have some people to go in and take over.

* * * * *

[7] Q. Were you elected to that position? A. No, I was hired.

Q. Were you hired and appointed by Mr. Brown? A. That's correct.

* * * * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

(Title omitted in printing)

DEPOSITION OF LEVERNON HUBBARD

(Filed August 31, 1978)

Excerpt of the deposition of LEVERNON HUBBARD, a Plaintiff herein, called by the Defendants as if upon Cross Examination under the Federal Rules of Civil Procedure, taken before me, the undersigned, Dianne Steindam, a Notary Public in and for the State of Ohio, at the offices of Gallon, Kalniz & Iorio, 3161 North Republic, Toledo, Ohio, on Thursday, March 23, 1978, at 10:30 o'clock a.m.

* * * * *

[2] CROSS EXAMINATION

By Mr. Allotta:

* * * * *

[5] Q. Were you elected or appointed as the Business Agent? A. I was appointed.

Q. And that was an appointment by Mr. Brown? A. Correct.

* * * * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

(Title Omitted in Printing)

DEPOSITION OF DONALD JAHNS

(Filed August 31, 1978)

Deposition of DONALD JAHNS, a Plaintiff herein, called by the Defendants as if upon Cross Examination under the Federal Rules of Civil Procedure, taken before me, the undersigned, Dianne Steindam, a Notary Public in and for the State of Ohio, at the offices of Gallon, Kalniz & Iorio, 3161 N. Republic, Toledo, Ohio, on Thursday, March 23, 1978, at 9:15 o'clock a.m.

* * * * *

[4] CROSS EXAMINATION

By Mr. Allotta:

* * * * *

[26] Q. Were you elected to the position as the Business Agent? A. No.

* * * * *

[27] Q. Now, did you sign an employment contract when you were hired as a Business Agent? A. An employment contract?

Q. Yes. In other words, did you sign a contract with Teamster's Local 20 that guaranteed your employment for a certain period of time? A. No.

* * * * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

(Title Omitted in Printing)

DEPOSITION OF FRANK HOWALD

(Filed August 31, 1978)

Excerpt of the deposition of FRANK HOWALD, a Plaintiff herein, called by the Defendants as if upon Cross Examination under the Federal Rules of Civil Procedure, taken before me, the undersigned, Dianne Steindam, a Notary Public in and for the State of Ohio, at the offices of Gallon, Kalniz & Iorio, 3161 North Republic, Toledo, Ohio, on Monday, April 3, 1978, at 10:35 o'clock a.m.

* * * * *

[2] CROSS EXAMINATION

By Mr. Allotta:

* * * * *

[8] Q. Now, Mr. Howald, were you elected as a Business Agent? A. No, I was not.

Q. You were appointed by Mr. Brown? A. That's correct.

* * * * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

(Title Omitted in Printing)

DEPOSITION OF RICHARD EDDINGTON

(Filed August 31, 1978)

Deposition of RICHARD EDDINGTON, a Plaintiff herein, called by the Defendants as if upon Cross Examination under the Federal Rules of Civil Procedure, taken before me, the undersigned, Dianne Steindam, a Notary Public in and for the State of Ohio, at the offices of Gallon, Kalniz & Iorio, 3161 N. Republic, Toledo, Ohio, on Monday, April 3, 1978, at 9:00 o'clock a.m.

* * * * *

[4] CROSS EXAMINATION

By Mr. Allotta:

* * * * *

[33] Q. Were you elected to the position as Business Agent? A. I was appointed by Omar Brown, President of Local 20.

* * * * *

[53] Q. Have you attended any Teamsters Union meetings since January 3rd, 1978? A. Yes, I have.

Q. Which ones? A. I have attended the Stewards' Council meeting. I believe there has been two.

[54] Q. Was that the one in February and in March? A. Yes, I believe so.

Q. You don't have a right to vote in the Stewards' Council meeting? A. No, I do not. That's something else that is definitely wrong. I am a member in good standing. I am a dues-paying member, and I don't have the right to voice my opinion, vote, or make a motion.

Q. At the Stewards' Council? A. At the Stewards' Council. I don't have a steward to represent me.

Q. Now, the questions I'm going to ask you, this just refers to the time since January 3rd, 1978. Have you remained a member of the Credit Union? A. Yes, I am.

Q. Has anyone tried to keep you from remaining a member of the Credit Union? A. I don't see how they could. The Credit Union is not part of Local 20. It's a separate organization.

Q. So no one has? A. Not to my knowledge.

* * * * *

[66] Q. Have you talked with any Local 20 members at your home or outside of the Union Hall? A. Yes, I have.

Q. Has anyone prevented you from having those discussions? A. Not in my home.

Q. Outside of the Union Hall? A. No. There was nobody—none of the staff around in Leu's conglomeration, from Leu's horse thieves.

Q. Are there any policies that are being implemented by Harold Leu that you disagree with? A. Yes, I do.

Q. Which ones? A. Paying Jack Gallon the kind of money he is paying him, the Easter party, wasting Union dues money for things like that. He's not supposed to be a social director. He's supposed to be a labor leader. The policy of not representing the membership, the policy of not organizing, the policy of pulling away from the United Labor Movement in the City of Toledo, a lot of things he's pulling.

Q. Are you in support of any of his policies? [67] A. Servicing the members, servicing Local 20, representing the members, yes, that I would be. But I don't believe he's doing it. And I definitely don't like his policy of giving away our membership to the Longshoremen because Ted Iorio represents the Longshoremen. We fought hard for those members. We organized them and now they're trying to give them away because Ted Iorio is the goddamn lawyer for the Longshoremen. It's the biggest sell out I've ever seen in the Labor Movement.

Q. How would you change the policies? A. How would I change the policies? I don't have the slightest idea. I have no desire to be President of that Local, but the main thing is to represent the membership, which is not being done.

Q. Do you feel Mr. Brown did? A. I don't feel that he did, I know he did. We have the dental center. We have good contracts, better wages, and in the two and a half years that has ever been had in that Local.

Q. Do you still— A. And he's honest.

* * * * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

(Title omitted in printing)

DEPOSITION OF ROBERT HANEY

(Filed August 31, 1978)

Excerpt of the deposition of ROBERT HANEY, a Plaintiff herein, called by the Defendants as if upon Cross Examination under the Federal Rules of Civil Procedure, taken before me, the undersigned, Scott N. Gamertsfelder,

a Notary Public in and for the State of Ohio, at the offices of Gallon, Kalniz & Iorio, 3161 North Republic Boulevard, Toledo, Ohio, on Monday, April 10, 1978, at 10:55 o'clock a.m.

* * * * *

[2] CROSS EXAMINATION

By Mr. Allotta:

* * * * *

[4] Q. And when you became a Business Agent, were you elected? A. No, sir.

Q. Were you appointed? A. Yes, sir.

Q. By Mr. Brown? A. Yes, sir.

* * * * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

(Title omitted in printing)

DEPOSITION OF WILLIAM TANK

(Filed August 31, 1978)

Excerpt of the deposition of WILLIAM TANK, a Plaintiff herein, called by the Defendants as if upon Cross Examination under the Federal Rules of Civil Procedure, taken before me, the undersigned, Scott N. Gamertsfelder, a Notary Public in and for the State of Ohio, at the offices of Gallon, Kalniz & Iorio, 3161 North Republic Boulevard, Toledo, Ohio, on Monday, April 10, 1978, at 9:00 o'clock a.m.

* * * * *

[2] CROSS EXAMINATION

By Mr. Allotta:

* * * * *

[6] Q. So, then you began work on September 18, 1975? A. (Witness indicated.)

Q. Were you elected to that position? A. No, appointed.

Q. And Mr. Brown appointed you? A. Right.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

(Title omitted in printing)

DEPOSITION OF EDWARD STRICKLIN

(Filed August 31, 1978)

Deposition of EDWARD STRICKLIN, a Plaintiff herein, called by the Defendants as if upon Cross Examination, under the Federal Rules of Civil Procedure, taken before me, the undersigned, Kathleen M. Carey, a Notary Public in and for the State of Ohio, pursuant to stipulations of counsel as hereinafter set forth, at the offices of Gallon, Kalniz & Iorio, 3161 North Republic Boulevard, Toledo, Ohio, on Friday, March 17, 1978, at 9:00 o'clock a.m.

[2] CROSS EXAMINATION

By Mr. Allotta:

Q. And when did you begin as a Business Agent? A. September 17th of '75.

Q. Were you elected to the position? A. No, I was appointed.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

(Title omitted in printing)

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

(Filed January 31, 1979)

I INTRODUCTORY

The Defendants in the instant action have filed simultaneous Motions for Summary Judgment pursuant to Rule 56 b of the Federal Rules of Civil Procedure alleging that they are entitled to judgment as a matter of law based upon the pleadings and the transcripts of Plaintiffs' depositions.[1] The excerpts of the depositions filed with the Court merely repeat a fact that Plaintiffs conceded during the hearing for preliminary injunctive relief, i.e., the Plaintiffs are all appointed rather than elected business agents. The Defendants avoid raising issues revealed in the depositions of Plaintiffs and merely reiterate the obvious by their filing of the excerpts.

* * * * *

1. It is interesting to note that the Defendants only filed one or two page excerpts of the Plaintiffs' depositions rather than filing the entire deposition. Counsel for Plaintiffs specifically recalls that several of the depositions contained testimony that demonstrated the hostile motive of Harold Leu in discharging the Plaintiffs for exercising their political support and expression for Omar L. Brown. These depositions were never ordered by the Defendants and counsel for Plaintiffs has been advised that the cost of the depositions alone is over $1,000.00. Since Plaintiffs cannot afford the prohibitive costs they are forced to rely upon affidavits some of which are attached hereto as exhibits.

"Question: (by Mr. Bolotin) Prior to January 3, the date of discharge, did you ever seek out any of the named Plaintiffs and ask them whether they would work under your administration?

Answer: (by Leu) No.

Q: Did you ever seek out Danny Farbrother, Jim Cassidy, Don Sarver, or Mary Jane Gill, and ask them whether, in your opinion, the named Plaintiffs would work under your administration?

A: No." Page 103.

The following is also illustrative:

"Q: (by Mr. Bolotin) Did you seek out, once you won the election and were installed, did you seek out any of the business agents that you discharged; that is, the named Plaintiffs, and ask them whether they would support your campaign, the platforms and so forth prior to your discharging them on January 3?

A: (by Mr. Leu) No.

Q: And isn't it true that between the time you were installed and the time that they were discharged that the named Plaintiffs did not oppose any of your platforms, openly give speeches, or oppose your platforms?

A: To the best of my knowledge, I don't know.

Q: And you didn't consider that when you made your decision to replace them, correct?

A: That's correct." Page 113.

* * * * *

AFFIDAVIT OF RONALD BOWMAN

I, Ronald Bowman, after being duly sworn hereby depose and state as follows:

1. I reside at 8910 U.S. 223, Ottawa Lake, Michigan.

2. I was a former business agent for Teamsters Local 20 under the Brown Administration.

3. Prior to becoming a business agent for the local union I was a steward at Jones Motor Company where I had 18 years of seniority as a truck driver.

4. As a steward I could participate and vote in all internal matters brought before the Stewards Council and therefore had a direct voice in the affairs of the local union.

5. As a business agent for Teamsters Local 20 I also could vote at all Stewards Council meetings on matters brought before it.

6. I was discharged by Harold Leu on January 3, 1978 in retaliation for my support of Omar L. Brown in the officers election.

7. After my discharge, I found that I could no longer participate in union matters because I no longer had a voice or vote in the Stewards Council.

8. I have information that Harold Leu is continuing to deny my rights as a union member by preventing me from being gainfully employed in the Teamster industry.

9. After being discharged, I sought employment from numerous Teamster employers. I had tremendous difficulty in finding a job and was finally hired by Preston Truck Lines. Francis Dixon, terminal manager, discharged me, however, before I could complete my probationary

period. He advised me that he was very satisfied with my work and my experience as a truck driver but because of the "situation at the union hall" he could not keep me. After I was discharged, Preston hired several other employees with no experience.

Further affiant saith naught.

/s/ RONALD BOWMAN

STATE OF OHIO)
) SS:
COUNTY OF LUCAS)

Sworn to and subscribed before me this 30 day of January, 1979.

/s/ SAM BOLOTIN
Notary Public

AFFIDAVIT OF BOBBY HANEY

I, Bobby Haney, after being duly sworn hereby depose and state as follows:

1. I reside at 2462 Olde Stone Ct., Apt 5, Toledo, Ohio.

2. I was employed as a Teamster business agent for Local 20 under the Brown Administration.

3. On January 3, 1978 I was discharged by Harold Leu for my political support and in retaliation for campaigning for Omar L. Brown in the officers election. Prior to becoming a business agent for Teamsters Local 20 I was employed as a truck driver for 18 years at Interstate Motor Freight Systems. I also was a steward at Interstate.

4. As a steward and as a business agent I had a voice and vote on all matters brought before the Stewards Council.

5. Since my discharge as a business agent, I no longer have a voice or vote in matters brought before this Stewards Council and therefore have no voice and vote in internal union affairs. I am presently no longer a steward for Teamsters Local 20.

6. After being discharged, I had a very difficult time finding any employment within the Teamster Industry. I had reason to believe that Harold D. Leu, in continuing his retaliation against me, blackballed me from the Teamster Industry. After my discharge, I applied for re-employment with Interstate Systems. I called Tom Shook, relay manager for Interstate, and inquired about re-employment. He told me that there was no way he could hire me because he had received a phone call. He implied that the phone call came from the union hall.

7. My employment within the Teamster industry has been sporadic and I have suffered severe financial harm and had to file bankruptcy.

Further affiant saith naught.

/s/ Bobby Haney

STATE OF OHIO)
) SS:
COUNTY OF LUCAS)

Sworn to and subscribed before me this 31 day of January, 1979.

/s/ Sam Bolotin
Notary Public

AFFIDAVIT OF LEVERNON HUBBARD

I, Levernon Hubbard, after being duly sworn hereby depose and state as follows:

1. I reside at 1919 Ottawa Drive, Toledo, Ohio.

2. I was formerly employed as a Teamster Business Agent under the presidency of Omar L. Brown.

3. On January 3, 1978, I was terminated by Harold Leu solely because of my political support for Omar Brown.

4. I have been blackballed from finding employment within the Teamsters industry and had been unable to hold a job more than for thirty (30) days which is the minimum in order to meet probationary employee requirements so that I can continue my membership in Teamsters Local 20. The reason that I know that I have been blackballed by Harold Leu and the present administration of Teamsters Local 20 is that I was told by Joe Brennen assistant terminal manager at Roadway Express that the reason Roadway was not going to allow me to work past my probationary period was because of pressure their company was receiving from the union hall under the Harold Leu administration.

5. I have been told by other individuals who have had conversations with management that the reasons they are not hiring me is because of pressure and an influence of the Harold Leu administration.

6. Prior to becoming a business agent for Teamsters Local 20 I was a steward at the H. J. Heinz Company. As a steward, I had a voice in the Stewards Council at Teamsters Local 20 and could vote on matters brought before it. When I became a business agent, I also could vote on matters that came before the Stewards Council and therefore had a voice in union affairs.

7. Since my discharge, I have lost my right to vote on matters before the Stewards Council since, although I am still a member of Teamsters Local 20, I am no longer a steward nor a business agent.

Further affiant saith naught.

/s/ LEVERNON HUBBARD

STATE OF OHIO)
) SS:
COUNTY OF LUCAS)

Sworn to and subscribed before me this 30th day of January, 1979.

/s/ SAM BOLOTIN
Notary Public

AFFIDAVIT OF DONALD FINNEGAN

I, Donald Finnegan, after being duly sworn hereby depose and state as follows:

1. I reside at 1708 South Shore, Oregon, Ohio 43618.

2. I was employed as a Teamsters business agent for Teamsters Local 20 under the Brown administration.

3. Prior to my employment with Teamsters Local 20, I was a steward and truck driver for Commercial Motor Freight. As a steward, I had a voice and vote in all matters brought before the Stewards Council.

4. As a business agent under the Brown Administration for Teamsters Local 20, I had a voice and vote on all matters brought before the Stewards Council. The Stewards Council is the governing body of the local union.

5. On January 3, 1978 I was discharged by Harold D. Leu because of my support for Omar Brown in the officers election. After being discharged as a business agent, I was unable to participate in the internal affairs of the local union because I could no longer vote on matters brought before the Stewards Council.

6. Since my discharge, I have found it impossible to find employment within the freight industry and stand to lose my pension benefits.

7. I finally found employment with Transportation Unlimited and after my probationary period was elected alternate Steward so since April 1, 1978 I have been able to participate in Stewards Council meetings.

8. Every time I attempt to speak on matters brought before the Stewards Council, the business agents presently employed by Harold D. Leu boo and shout me down and prevent me from exercising my voice on union matters.

Further affiant saith naught.

/s/ DONALD FINNEGAN

STATE OF OHIO)
) SS:
COUNTY OF LUCAS)

Sworn to and subscribed before me this 29 day of January, 1979.

/s/ SAM BOLOTIN
Notary Public

AFFIDAVIT OF HARRY STARKEY

I, Harry Starkey, after being duly sworn hereby depose and state as follows:

1. I reside at 1515 Toul, Oregon, Ohio.

2. I have been employed as a business agent for Teamsters Local 20 under presidents Free and Brown. I also was elected a trustee of a local union under the Brown Administration and am presently a trustee of Teamsters Local 20.

3. Prior to being hired as a business agent for Teamsters Local 20 I was a steward and truck driver for B & P and Dundee Truck Lines. As a steward, I had a voice and could vote in matters brought before the Stewards Council, the governing body of Teamsters Local 20. As a business agent for Teamsters Local 20 I also could vote and have a voice on matters brought before the Stewards Council. As a trustee, I still have a voice and vote in matters brought before the Stewards Council and also have a voice on matters brought before the Executive Board of Teamsters Local 20.

4. On January 3, 1978, I was discharged by Harold Leu for my political support of Omar Brown. Although I remained a trustee since I was voted into that office, I lost my office at the local union hall and no longer have the same access to the members that I had before. As such, Harold Leu has denied me access to the members and prevented me from actively participating in union affairs.

5. On several occasions I have not been notified of Executive Board meetings and have been unable to attend same. The Executive Board makes recommendations to the Stewards Council and is a vital part of the governing

of the Local Union. Indeed on one occasion they didn't notify me of an Executive Board meeting until the meeting was already over. Thus Harold Leu has been able to prevent me from participating in union affairs and denying me my voice and vote on the Executive Board for Teamsters Local 20.

6. I was unemployed for six months after being discharged by Harold Leu and had great difficulty in finding employment within the Teamster industry. I presently am employed. However, because of the grave financial injury incurred to myself and family have had a very difficult time in attending union matters and participating as freely in the affairs of the union as I did before my discharge.

Further affiant saith naught.

/s/ HARRY STARKEY

STATE OF OHIO)
) SS:
COUNTY OF LUCAS)

Sworn to and subscribed before me this 31st day of January, 1979.

/s/ SAM BOLOTIN
Notary Public

Civil Action No. C78-8

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OHIO

WESTERN DIVISION

RAYMOND NAVARRO, *et al.*,
Plaintiffs,

VS.

HAROLD LEU, *et al.*,
Defendants.

OPINION AND ORDER

Note:

The Opinion and Order of the United States District Court is printed in the Petition for Certiorari at page A4.

No. 79-3415

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

RAYMOND NAVARRO, *et al.*,
Plaintiffs-Appellants,

v.

HAROLD D. LEU, *et al.*,
Defendants-Appellees.

ORDER

Note:

The Opinion and Order of the United States Court of Appeals for the Sixth Circuit is printed in the Petition for Certiorari at page A1.

Office-Supreme Court, U.S.
FILED
JUL 22 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-2150

Supreme Court of the United States

October Term, 1980

DONALD FINNEGAN, *et al.*,
Petitioners,

vs.

HAROLD D. LEU, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

JACK GALLON
JEFFREY JULIUS
Counsel of Record
GALLON, KALNIZ & IORIO CO., L.P.A.
3161 N. Republic Boulevard
Toledo, Ohio 43615
(419) 535-1976
Counsel for Respondents

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-5647

QUESTION PRESENTED

Was Respondent Leu's removal of appointed employees of the Respondent Union, who serve at the will of the president of the Respondent Union, lawful under the Labor-Management Reporting and Disclosure Act of 1959 (hereinafter referred to as the "LMRDA"), 29 U.S.C. §401 *et seq.*?

LIST OF ALL PARTIES

The Respondents are: Harold D. Leu (hereinafter referred to as "Leu") and Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union 20 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter referred to as the "Union").

TABLE OF CONTENTS

Questions Presented I
List of All Parties I
Table of Authorities III
Opinion Below 1
Jurisdiction 2
Statutory Provisions Involved 2
Statement of the Case 2
Reasons Why the Writ Should Be Denied 5
Conclusion 13

Appendix:

29 United States Code:

Section 401 ..... A1
Section 411 ..... A2
Section 481 ..... A3
Section 529 ..... A3

TABLE OF AUTHORITIES

Cases

Bradford v. Textile Workers of America, AFL-CIO, 563 F.2d 1138 (4th Cir. 1977) 7, 8
Cooke v. Orange Belt District Council of Painters No. 48, 529 F.2d 815 (9th Cir. 1976) 7, 8
Durham v. U.S., 401 U.S. 481 (1971) 5
Fay v. Noia, 372 U.S. 391 (1963) 5
Gabauer v. Woodcock, 520 F.2d 1084 (8th Cir. 1975) 7, 8

Grand Lodge of International Association of Machinists v. King, 335 F.2d 340 (9th Cir.), *cert. denied*, 379 U.S. 920 (1964) 7, 8

Martire v. Laborers' Local Union 1058, 410 F.2d 32 (3rd Cir.), *cert. denied*, 396 U.S. 903 (1969) 6, 8, 9

Newman v. Local 1101, CWA, 570 F.2d 439 (2nd Cir. 1978) 6, 9

Sheridan v. United Brotherhood of Carpenters, 306 F. 2d 152 (3rd Cir. 1962) 6, 9

Wambles v. International Brotherhood of Teamsters, etc., 488 F.2d 888 (5th Cir. 1974) 6, 9, 10

Wood v. Dennis, 489 F.2d 849 (7th Cir. 1972), *cert. denied*, 415 U.S. 960 (1973) 7, 8, 10

Statutes

Labor Management Reporting and Disclosure Act of 1959, Sec. 2, 29 U.S.C. Sec. 401 ..... 2, 4, 6, 8, 9, 12

Labor Management Reporting and Disclosure Act of 1959, Sec. 101(a)(1), 29 U.S.C. Sec. 411(a)(1) 2, 4, 6, 9

Labor Management Reporting and Disclosure Act of 1959, Sec. 101(a)(2), 29 U.S.C. Sec. 411(a)(2) 2, 4, 6, 9

Labor Management Reporting and Disclosure Act of 1959, Sec. 102, 29 U.S.C. Sec. 412 2

Labor Management Reporting and Disclosure Act of 1959, Sec. 401(e), 29 U.S.C. Sec. 481 ..... 2, 8

Labor Management Reporting and Disclosure Act of 1959, Sec. 609, 29 U.S.C. Sec. 529 ..... 2, 4, 6, 9, 11

Rule

Supreme Court of the United States, Rule 17.1 5

No. 80-2150

Supreme Court of the United States

October Term, 1980

DONALD FINNEGAN, *et al.*,
Petitioners,

vs.

HAROLD D. LEU, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals, not yet reported, appears in the Appendix to the Petition for Writ of Certiorari at page A1. The opinion of the United States Dis-the Court for the Northern District of Ohio, Western Division appears in the Appendix to the Petition for Writ of Certiorari at page A4.

JURISDICTION

The Respondents agree with the jurisdictional statement contained in the Petitioner's Petition for Writ of Certiorari.

STATUTORY PROVISIONS INVOLVED

This case involves §2, §101(a)(1), §101(a)(2), §102, §401(e) and §609 of the LMRDA of 1959, 29 U.S.C. §401, 29 U.S.C. §411(a)(1), 29 U.S.C. §411(a)(2), 29 U.S.C. §412, 29 U.S.C. §481(e) and 29 U.S.C. §529 (1976) (Appendix, p. A1).

STATEMENT OF THE CASE

The instant case arises out of Respondent Leu's removal of fifteen (15) appointed employees of Respondent Union, who served at the will of the president of Respondent Union, pursuant to the by-laws of Respondent Union. *See,* March 23, 1981 Order of the United States Court of Appeals for the Sixth Circuit and March 30, 1979 Opinion and Order of the United States District Court for the Northern District of Ohio, Western Division. The Respondent Union is an unincorporated association more commonly known as a labor organization which represents approximately 14,000 members in the northwestern Ohio area. In December of 1977, an election for the presidency and other officers of Respondent Union pitted the slate of Respondent Harold D. Leu against the slate of incumbent officers headed by Omar L. Brown. *See,* Tr. at 63[1] There

1. "Tr." refers to the pages in the Appendix in the Court of Appeals.

is no dispute among the parties to this action that the election was hotly contested; and, that campaigning was vigorous for both slates. *See*, Tr. at 63. Respondent Leu was declared the victor in that election.

During the 1977 campaign that resulted in Respondent Leu's election, Respondent Leu campaigned vigorously upon the issue of representation of the rank-and-file membership of the Respondent Union. In fact, the primary issue in Respondent Leu's campaign and his primary campaign promise to the membership of the Respondent Union was that if elected, he would improve the service to and representation of the rank-and-file membership of the Respondent Union over that of the previous Brown administration. *See*, Tr. at 121 and 125. Such representation and service to the membership is the primary responsibility of appointed employees known as "Business Agents". The business agents for Respondent Union serve at the will of the president, are responsible to the president of Respondent Union, and, are responsible for carrying out those tasks and policies dictated by the president of the Respondent Union. *See*, Tr. at 74 through 77 and 124.

Prior to taking office as president of the Respondent Union on December 30, 1977, Respondent Leu determined that in order to carry out his campaign promise of improving the representation and service to the membership of the Respondent Union, it would be necessary to replace many of the business agents employed under the previous Brown administration. *See*, Tr. at 124 through 125. Respondent Leu based this determination upon his observations of Petitioners in carrying out their duties under the Brown administration. *See*, Tr. at 123 through 124 and 138. As a result of this determination, on January 3, 1978, Respondent Leu informed fifteen (15) appointed employees, including Petitioners, that he was terminating

their employment with the Respondent Union. *See,* Tr. at 67. At that time, Respondent Leu informed each of the Petitioners that he was terminating their employment as employees with the Respondent Union based upon his belief that they were unable to fulfill his campaign commitments of better service to and representation of the membership by virtue of their performance under and loyalty to the policies of Omar Brown. *See,* Tr. at 125 and 126. Respondent Leu further informed the Petitioners that he did not believe, based upon their past performance under the Brown administration, that they could adequately represent and service the membership of the Respondent Union in the manner in which Respondent Leu believed they should be represented. *See,* Tr. at 117, 126 and 138. Although Respondent Leu discharged the Petitioners in this action, he did retain as employee-business agents two (2) individuals who had served in that capacity under the Brown administration and who had supported Brown in his campaign. *See,* Tr. at 82 through 84 and 92. Respondent Leu did not at this time, or at any other time, expel or attempt to expel Petitioners from membership in the Respondent Union or interfere in any way with the exercise of their rights as Union members. *See,* Tr. at 105 and 114.

Shortly after their removal as employees of Respondent Union, Petitioners filed a complaint in the United States District Court for the Northern District of Ohio, Western Division alleging that they had been discharged in violation of their rights under §401 and §609 of the LMRDA of 1959, 29 U.S.C. §411 and §529. *See,* Tr. at 1. The Petitioners sought and were denied a preliminary injunction, following a hearing on the Petitioner's request for the same. *See,* Tr. at 6 through 165. Following the denial of Petitioners' request for a preliminary injunction, depositions were taken. Based upon the evidence adduced

at the hearing on Petitioners' request for a preliminary injunction, depositions, affidavits and briefs of counsel, the United States District Court for the Northern District of Ohio, Western Division concluded that Respondent Leu's removal of the appointed employees of the Respondent Union was lawful under the LMRDA; and, granted Respondents summary judgment on March 30, 1979. *See,* Petition for Writ of Certiorari at A5.

On March 23, 1981, the United States Court of Appeals for the Sixth Circuit issued an order finding:

> Accordingly, the judgment is affirmed for the reasons set forth in the well-written opinion of Judge Young filed on March 30, 1979.

See, Petition for Writ of Certiorari at A3. Thereafter, Petitioners filed a Petition for Writ of Certiorari to this Honorable Court on June 17, 1981.

REASONS WHY THE WRIT SHOULD BE DENIED

Rule 17.1 of the Revised Rules of the Supreme Court of the United States provides in relevant part:

> A review of writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor.

See also, Durham v. U.S., 401 U.S. 481 (1971); and *Fay v. Noia,* 372 U.S. 391 (1963). The following brief discussion will demonstrate that there are no "special and important reasons" for the granting of a writ of certiorari in the instant case; and therefore, the Petition for Writ of Certiorari must be denied.

A. The Allegedly Conflicting Decisions Cited by Petitioners Are Distinguishable on Their Facts

While the Petitioners have failed to clearly identify the consideration(s) that allegedly warrant review on certiorari in the instant case, it would appear that Petitioners are urging that the Marcn 23, 1981 Order issued by the United States Court of Appeals for the Sixth Judicial District is in direct conflict with decisions of the United States Court of Appeals for the Fourth, Seventh, Eighth and Ninth Judicial Districts on the same matter of federal law. An examination of the Circuit Court decisions cited by Petitioners, however, demonstrate that they are factually distinguishable from the instant case; and therefore, Petitioners' Writ of Certiorari must be denied.

The gravamen of Petitioners' complaint was and is that they were removed as *appointed* employees of Respondent Union allegedly for their support of a losing candidate in an election of officers for the Respondent Union and this removal from employee status violated §401(a)(1), §401(a)(2) and §609 of the LMRDA of 1959, 29 U.S.C. §411(a)(1), 29 U.S.C. §411(a)(2) and 29 U.S.C. §529. This contention was rejected by both the United States District Court for the Northern District of Ohio, Western Division and the United States Court of Appeals for the Sixth Circuit on the basis of *Wambles v. International Brotherhood of Teamsters, etc.*, 488 F.2d 888 (5th Cir. 1974); *Newman v. Local 1101, CWA*, 570 F.2d 439 (2nd Cir. 1978); *Martire v. Laborers' Local Union 1058*, 410 F.2d 32 (3rd Cir.), *cert. denied*, 396 U.S. 903 (1969); and, *Sheridan v. United Brotherhood of Carpenters*, 306 F.2d 152 (3rd Cir. 1962) as well as the following findings:

(1) Termination as a business agent did not mean that the plaintiffs were otherwise ineligible to

continue union membership. (Petition for Writ of Certiorari at A7);

(2) By terminating the plaintiffs here, they have not lost any of their rights as union members. They remain free to work in the industry and to seek union office. (Petition for Writ of Certiorari at A8); and

(3) The evidence does not indicate that the firings were an attempt to stifle dissent in the union. (Petition for Writ of Certiorari at A8).

Thus, the District Court and Court of Appeals concluded that since the LMRDA only protects "membership rights" and the Petitioners were asserting employment rights, that the removal of these appointed employees was lawful.

The Petitioners are currently taking the position that the District Court and Sixth Circuit decisions are directly in conflict with the decisions in *Grand Lodge of the International Assn. of Machinists v. King*, 335 F.2d 340 (9th Cir.), *cert. denied*, 379 U.S. 920 (1964); *Wood v. Dennis*, 489 F.2d 849 (7th Cir. 1972), *cert. denied*, 415 U.S. 960 (1973); *Gabauer v. Woodcock*, 520 F.2d 1084 (8th Cir. 1975); *Cooke v. Orange Belt District Council of Painters No. 48*, 529 F.2d 815 (9th Cir. 1976); and, *Bradford v. Textile Workers of America*, 563 F.2d 1138 (4th Cir. 1977). An examination of each of these cases, except *Grand Lodge*, demonstrates an important factual distinction between those cases and the case at bar. In each case cited by Petitioners,[2] the

2. While the *Grand Lodge, supra*, case involved an appointed Grand Lodge representative, the holding in *Grand Lodge, supra* was premised upon a finding that: "There are no decisions to the contrary. We are satisfied that this is the proper construction of the statute." 335 F.2d at 347. The Ninth Circuit seems to have recognized the distinction between elected officers and appointed

(Continued on following page)

person being removed was an *elected* officer of the union. *See, Wood v. Dennis,* 489 F.2d 849, 851 (7th Cir. 1972) (duly-elected president of the T-C Division); *Gabauer v. Woodcock,* 520 F.2d 1084, 1087 (8th Cir. 1975) (elected Shop Committee and elected Zone Committeeman); *Cooke v. Orange Belt District Council of Painters No. 48,* 529 F.2d 815, 818 (9th Cir. 1976) (elected business representative); and, *Bradford v. Textile Workers of America, Local 1093, AFL-CIO,* 563 F.2d 1138, 1139 (4th Cir. 1977) (elected union committeeman). It is clear that the right to hold an elective office is clearly a "membership right" as opposed to an "employment right". *See,* LMRDA §401(c), 29 U.S.C. §481(e) (1976). Thus, the cases cited by Petitioners merely provide a cause of action for a member of a union who is removed from an elective office. Since the Petitioners did not hold an elective office, the instant case is clearly distinguishable from the cases cited by Petitioners on its facts. Thus, the instant case does not present this Court with a direct conflict with the holdings of the Fourth, Seventh, Eighth and Ninth Circuits. Therefore, there are no "special and important reasons" for a review of this case, and, the Petition for Writ of Certiorari must be denied.

Footnote continued—

employees of a union in *Cooke v. Orange Belt District Council of Painters,* 529 F.2d 815, 821, wherein it was recognized: "Moreover, we are disinclined to permit the waiver under the circumstances of this case to excuse a failure to comply with Rule 52(a) Fed. R. Civ. P. Our reluctance is based in part on the view that union officers, who are not entitled to the protections of section 101(a)(5) when the 'discipline' does not affect their 'status quo union member', *Martire v. Laborers Local 1058,* 410 F.2d 32, 35 (3rd Cir.), *cert. denied,* 396 U.S. 903, 90 S. Ct. 216, 24 L. Ed. 2d 179 (1969), should be afforded the protection that the necessity to prepare findings of fact and conclusions of law provides." Thus, the Ninth Circuit's application of the *King* holding to non-elected union officials is in doubt.

B. The Petitioners' Argument Is Without Merit, Whether or Not There Is a Split in the Circuits

Assuming arguendo there is a split in the circuits on the question of whether a union's removal of an appointed employee for supporting an opposition candidate violates the LMRDA, the Courts below have found and the Respondents agree that the more well reasoned authorities hold that the provisions of the LMRDA apply only to the rights of union members acting in their capacity as union members and do not extend job protection to appointed employees of a union. *See, Wambles v. International Brotherhood of Teamsters,* 488 F.2d 888 (5th Cir. 1974); *Newman v. Local 1101, CWA,* 570 F.2d 439 (2nd Cir. 1978); *Martire v. Laborers' Local Union 1058,* 410 F.2d 32 (3rd Cir.), *cert. denied,* 396 U.S. 903 (1969); and, *Sheridan v. United Brotherhood of Carpenters,* 306 F.2d 152 (3rd Cir. 1962).

These cases uniformly hold that while officers and employees of a union possess the full panoply of rights enumerated in the LMRDA in their capacities as members of the union, these rights do not apply to union officials and employees in their capacities as union employees. The Courts in these cases base this conclusion upon two separate and distinct factors. The Courts first base this conclusion upon the language contained in the LMRDA itself. The Act refers exclusively to the rights and remedies of union members, and nowhere states that it is applicable to appointed union officials. *See,* 29 U.S.C. §401, 29 U.S.C. §411, and, 29 U.S.C. §529. Thus, on its face, the language of the LMRDA indicates that it is designed to protect only union membership rights.

The Courts in the cases cited above also have based their determination that the protections and remedies of

the LMRDA do not apply to union officials and employees in their capacities as officials and employees of the union upon what can only be termed a realistic and reasoned analysis of the untenable situation in which unions would be placed should they be prohibited by the LMRDA from discharging union officials whose political and policy loyalties and views are at odds with those of the union administration. For example, the United States Court of Appeals for the Fifth Circuit in a case on all fours with the instant one recognized that:

> As a practical matter, the Union's President should be able to work with those who will cooperate with his program and carry out his directives. It can be argued that an appointed office holder under the President who has opposed him in the election does not guarantee obstructionist policies . . . and that before the appointed official could be discharged for cause he would have to show an actual conflict of interest. This is a rather charitable view of persons recently involved in political conflicts. A more realistic view would be that in a great majority of cases the friction generated in the election campaign would infect and seriously impede the successful candidate's implementation of his program approved by the membership electing him. 488 F.2d at 88.

The cases cited above, then, analyze the rights of union officials and employees under the LMRDA in light of the realities of union politics and administration rather than in a hypothetical vacuum as Petitioners seem to contend those rights should be analyzed.[3] To rule that Re-

---

3. This specific fact has been recognized by Judge, and now Justice Stevens in *Wood v. Dennis*, *supra* at 858, wherein it provides: "Second, as I understand the King rationale—at least as it applies to Unions which have not adopted such speech-inhibiting

(Continued on following page)

spondent Union was required to continue the employment of Petitioners as employees under the new Union administration until such time as they gave additional cause for discharge or until such time as they retire, would mean that Petitioners could remain on the Respondent Union payroll indefinitely while undermining the Respondent Union's administration solely to make it ineffective. Respondents would submit that this realistic analysis of the situation existing within the Respondent Union must be given great weight in determining the application of the LMRDA to union employees in their capacities as employees. If this were not the case, Petitioners in their capacities as appointed employees of Respondent Union would have far greater rights and protection under §401 and §609 of the LMRDA that was ever contemplated by Congress in enacting the statute. Thus, it is Respondents' position that the Courts below correctly followed the more well reasoned and realistic authorities cited above. Therefore, even assuming for purposes of argument only that there is a split in the Circuits on the question of whether the Union's discharge of an *appointed* employee for supporting an opposition candidate violates the LMRDA, the Petitioners' argument that the LMRDA extends job pro-

---

Footnote continued—

regulations as may be permitted by the proviso to §101(a)(2)—the removal of an appointed union executive who publicly disagrees with the leadership of the union on questions of policy is prohibited. Patronage is by no means an essential attribute of democracy, . . . but it is difficult to believe that Congress intended to address the patronage issue when it enacted the Landrum-Griffin Act in 1959. Had it done so, I am inclined to believe that appointed policy-making officials would have been subject to removal by their sponsors . . . [T]he important fact that defendant's actions were directed against an elected rather than an appointed officer may bring this controversy within the Second Circuit's rationale in *Schonfeld v. Penza*, 477 F.2d 899, 83 LRRM 2020 (1973). *See Driscoll v. International Union of Operating Engineers, Local 139, et al.*, ... F.2d ....., 84 LRRM 2255 (7th Cir., September 11, 1973, No. 72-1423)."

tection to Petitioners is without merit. Thus, the Petition for Writ of Certiorari must be denied.

C. The Petitioners' Argument Is Without Merit Whether or Not the Decision Below Was Correct

Even assuming arguendo that there is a split in the Circuits on the question of whether the removal of an *appointed* employee for supporting an opposition candidate violates the LMRDA, this Court need not reach this question in disposing of the instant case. The previous section of this brief (*See*, subsection A above) demonstrates that the Courts below specifically found that Petitioners' rights under §401 of the LMRDA were not interfered with and/or that Petitioners were not disciplined for exercising a right guaranteed by §401 of the LMRDA, wherein it was stated:

(1) Termination as a business agent did not mean that the plaintiffs were otherwise ineligible to continue union membership. (Petition for Writ of Certiorari at A7).

(2) By terminating the plaintiffs here, they have not lost any of their rights as union members. They remain free to work in the industry and to seek union office. (Petition for Writ of Certiorari at A8); and,

(3) The evidence does not indicate that the firings were an attempt to stifle dissent in the union. (Petition for Writ of Certiorari at A8).

Thus, even assuming for purpose of argument only that Petitioners have a cause of action under the LMRDA, the Court specifically found no violation of the Act. Therefore, there are no "special and important reasons" for the granting of review on certiorari.

CONCLUSION

For all the reasons set forth above, the Petition for Writ of Certiorari must be denied.

Respectfully submitted,

JACK GALLON
JEFFREY JULIUS
Counsel of Record
GALLON, KALNIZ & IORIO CO., L.P.A.
3161 N. Republic Boulevard
Toledo, Ohio 43615
(419) 535-1976
Counsel for Respondents

APPENDIX

29 U.S.C. Sec. 401

(a) The Congress finds that, in the public interest, it continues to be the responsibility of the Federal Government to protect employees' rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities for their mutual aid or protection; that the relations between employers and labor organizations and the millions of workers they represent have a substantial impact on the commerce of the Nation; and that in order to accomplish the objective of a free flow of commerce it is essential that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, particularly as they affect labor-management relations.

(b) The Congress further finds, from recent investigations in the labor and management fields, that there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives.

(c) The Congress, therefore, further finds and declares that the enactment of this chapter is necessary to eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants, and their officers and representatives which distort and

defeat the policies of the Labor Management Relations Act, 1947, as amended,[1] and the Railway Labor Act, as amended,[2] and have the tendency or necessary effect of burdening or obstructing commerce by (1) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (2) occurring in the current of commerce; (3) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods into or from the channels of commerce, or the prices of such materials or goods in commerce; or (4) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods into or from the channels of commerce.

29 U.S.C. Sec. 411

(a) (1) EQUAL RIGHTS—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

(2) FREEDOM OF SPEECH AND ASSEMBLY—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: PROVIDED, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules

as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

29 U.S.C. Sec. 481

(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 of this title and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof.

29 U.S.C. Sec. 529

It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this chapter. The provisions of section 412 of this title shall be applicable in the enforcement of this section.

Office - Supreme Court, U.S.
FILED
NOV 23 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-2150

In the Supreme Court of the United States

October Term, 1981

DONALD FINNEGAN, *et al.*,
Petitioners,

vs.

HAROLD D. LEU, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR PETITIONERS

SAMUEL G. BOLOTIN
(*Counsel of Record*)
BOLOTIN & BOLOTIN CO., L.P.A.
2nd Floor Gardner Building
506 Madison Avenue
Toledo, Ohio 43604
(419) 241-1900
Counsel for Petitioners

JACK GALLON
JEFFREY JULIUS
(*Counsel of Record*)
GALLON, KALNIZ & IORIO CO., L.P.A.
3161 North Republic Blvd.
Toledo, Ohio 43615
(419) 535-1976
Counsel for Respondents

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-5647

QUESTION PRESENTED

Were the Landrum-Griffin Freedom of Speech Political Rights of Fifteen (15) appointed business agents violated by the summary wholesale discharge of the business agents by the prevailing presidential candidate, Harold D. Leu, for their support of the opposition candidate, Omar L. Brown, in the 1977 officers' election for Teamsters Local 20?

LIST OF ALL PARTIES

The Petitioners are: Donald Finnegan, Bobby Haney, Ronald Bowman, Denver Phillips, William Tank, Richard Eddington, Charles Winters, and Edward Stricklin. The petitioners represent eight of the original fifteen business agents who were discharged by Harold D. Leu upon his defeat of Omar L. Brown during the 1977 Teamsters Local 20 Officers' Election.

The Plaintiffs in the Court below included the above-named petitioners as well as seven other business agents who were also summarily discharged for their political support of candidate Brown. The other Plaintiffs include Raymond Navarro, who renounced his political support for Brown and returned to work for Leu, James Root the vice president elected during the 1977 officers' election who has since died, Frank Howald who left the Teamster industry and took a job with management, and Harry Starkey (elected trustee), John Clark, Donald Jahns and Levernon Hubbard who have elected not to join in the petition for financial reasons.

Respondents are Harold D. Leu, and Teamsters, Chauffeurs, Warehousemen and Helpers of America Local Union #20 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

TABLE OF CONTENTS

QUESTION PRESENTED I
LIST OF ALL PARTIES II
OPINIONS BELOW 1
JURISDICTION 2
STATUTORY PROVISIONS INVOLVED 2
STATEMENT OF THE CASE 3
A. Facts 3
B. The Proceedings Below 8
SUMMARY OF ARGUMENT 10
ARGUMENT—
I. THE COURTS BELOW ERRED BY ADOPTING THE MINORITY LINE OF AUTHORITY AMONG A SPLIT IN THE CIRCUIT COURTS ON WHETHER UNION EMPLOYEES OR OFFICERS WHO ARE ALSO UNION MEMBERS HAVE A CAUSE OF ACTION UNDER THE LMRDA WHEN THEY ARE DISCHARGED IN RETALIATION FOR EXERCISING RIGHTS GUARANTEED THEM AS UNION MEMBERS 12
A. The Law 12
B. The Majority Theory 15
C. The Minority Authority—Theory and Distinctions 17
D. The Fallacy of *Wambles* 22
E. Leu's Bad Faith Motivation 27
F. The Discharge of Petitioners Was Designed to Interfere With Their Rights As Members 30
CONCLUSION 35

TABLE OF AUTHORITIES

Cases

Alvino v. Bakery Workers Union, 46 L.R.R.M. 2812 (D.D.C. 1960) 15, 35

Bakery & Confectionery Workers International Union v. Ratner, 335 F.2d 691, 56 L.R.R.M. 2432 (D.C. Cir., 1964) 15, 17, 35

Bradford v. Textile Workers, 563 F.2d 1138, 96 L.R.R.M. 2690 (4th Cir., 1977) 14, 28

Calhoun v. Harvey, 379 U.S. 134, 57 L.R.R.M. 2561 (1964) 17

Cooke v. Orange Belt District Council, 529 F.2d 815, 91 L.R.R.M. 2349 (9th Cir., 1976) 14, 15

DeCampli v. Greeley, 293 F. Supp. 746, 69 L.R.R.M. 2786 (D.N.J. 1968) 15, 16, 26

Gabauer v. Woodcock, 520 F.2d 1084, 89 L.R.R.M. 2961 (8th Cir., 1975), *cert. denied*, 423 U.S. 1061 (1976) 14, 15

George v. Bricklayers Union, 255 F. Supp. 239, 62 L.R.R.M. 2478 (E.D. Wisc. 1966) 15, 35

Grand Lodge v. King, 335 F.2d 340, 56 L.R.R.M. 2639 (9th Cir., 1959), *cert. denied*, 379 U.S. 920, 57 L.R.R.M. 2512 (1964) 14, 15, 16, 24, 26, 35

Kuebler v. Lithographers Local 24-P, 473 F.2d 359, 82 L.R.R.M. 2717 (6th Cir., 1973) 17

Lamb v. Miller, 107 L.R.R.M. 3064 (D.C. Cir., 1981) 15

Maceira v. Pagan, 649 F.2d 8 (1st Cir., 1981) 15

Marshall v. Teamsters Local 20, 611 F.2d 645, 103 L.R.R.M. 2111 (6th Cir., 1979) 5

Martire v. Laborers' Local Union 1058, 410 F.2d 32 (3d Cir.), *cert. denied*, 396 U.S. 903 (1969) 15, 17, 18, 21

Miller v. Holden, 535 F.2d 912, 95 L.R.R.M. 2152, 2155 (5th Cir., 1976) 16, 22, 28

Newman v. Local 1101, Communication Workers of America (Newman I), 570 F.2d 439 (2d Cir., 1978) 15, 17-18, 19, 20

Newman v. Local 1101, Communication Workers of America (Newman II), 597 F.2d 833, 101 L.R.R.M. 2265 (1979) 20, 21, 27

Price v. United Mine Workers, 376 F. Supp. 1015, 86 L.R.R.M. 2577, *aff'd without opinion*, 515 F.2d 1018, 90 L.R.R.M. 2844 (D.C. Cir., 1975) 15, 35

Retail Clerks Union, Local 648 v. Retail Clerks International Association, 299 F. Supp. 1012, 70 L.R.R.M. 3366 (D.D.C. 1969) 14-15, 16, 25, 26, 28, 35

Salzhandler v. Caputo, 316 F.2d 445, 52 L.R.R.M. 2908, 2910, 2911 (2d Cir., 1963) 16, 24

Sheridan v. United Bros. of Carpenters, 306 F.2d 152, 50 L.R.R.M. 2637 (3d Cir., 1962) 16, 18, 21, 22

Wambles v. International Brotherhood of Teamsters, etc., 488 F.2d 888 (5th Cir., 1974) 10, 15, 16, 18, 22, 23, 24, 27, 30

Wirtz v. Bottleblowers Assn., 389 U.S. 463, 67 L.R.R.M. 2129 (1968) 17

Wirtz v. Hotel Employees, 391 U.S. 492, 68 L.R.R.M. 2305 (1968) 17

Wood v. Dennis, 489 F.2d 849, 84 L.R.R.M. 2662 (7th Cir., 1972), *cert. denied*, 415 U.S. 960, 85 L.R.R.M. 2530 (1974) 14, 22, 25

Statutes

28 U.S.C.A. §1254(1) 2

29 U.S.C. 401 *et seq.* 12

Labor-Management Reporting and Disclosure Act of 1959:

§101(a)(1), 29 U.S.C.A. §411(a)(1) 2, 8, 10, 12, 14, 15, 16, 24, 26

§101(a)(2), 29 U.S.C.A. §411(a)(2) 2, 8, 10, 12, 14, 15, 16, 24, 26

§102, 29 U.S.C.A. §412 .....3, 10, 16, 17

§609, 29 U.S.C.A. §529 .....3, 8, 10, 13, 14, 15, 16, 17

Text

Summers, *Judicial Settlement of Internal Union Disputes*, BUFFALO LAW REVIEW, Vol. 7 at 423 25

No. 80-2150

In the Supreme Court of the United States

October Term, 1981

DONALD FINNEGAN, *et al.*,
Petitioners,

vs.

HAROLD D. LEU, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion and order of the United States District Court for the Northern District of Ohio Western Division granting the Defendants' motion for summary judgment is reproduced in Petitioners' Appendix at pages A4-A9 and is reported at 469 F. Supp. 932. The opinion and order of the United States Court of Appeals for the Sixth Circuit affirming the judgment of the District Court is reproduced in Petitioners' Appendix at A1-A3 and is unreported.

JURISDICTION

The judgment of the Court of Appeals was entered on March 23, 1981 and issued as a mandate on or about June 11, 1981. The petitioners had originally attained an order staying the mandate for thirty (30) days on May 12, 1981, but did not seek to continue the stay of the mandate. The jurisdiction of this Court is invoked pursuant to 28 U.S.C.A. §1254(1).

STATUTORY PROVISIONS INVOLVED

29 U.S.C.A. §411(a)(1) and (2):

(a)(1) EQUAL RIGHTS—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations, and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

(2) FREEDOM OF SPEECH AND ASSEMBLY—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meetings subject to the organization's established and reasonable rules pertaining to the conduct of meetings: Provided, that nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institu-

tion and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

29 U.S.C.A. §412:

Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred or where the principal office of such labor organization is located.

29 U.S.C.A. §529:

It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this chapter. The provisions of Section 412 of this title shall be applicable in the enforcement of this section.

STATEMENT OF THE CASE

A. Facts

This suit was originally brought by fifteen (15) appointed business agents who were summarily discharged by Harold D. Leu the prevailing presidential candidate during the 1977 Teamsters Local 20 officers' election. Respondent Leu discharged the full time business agents as his first official act in office after his defeat of the opposi-

tional candidate Omar L. Brown in retaliation for the business agents' political support for Brown during the election. The discharged agents included James Root, elected as vice president, and Harry Starkey, elected as trustee (J.A. 16).

The facts giving rise to this appeal can be simply stated. Local 20 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization of some 12,500 members in Northwestern Ohio. From its inception some twenty-five years ago, it has had only four (4) presidents, one of whom served a term of nine months (R. 17-19; H.D.L. 30-40).[1]

The first seriously contested election for the officership of Local 20 was in December of 1974. The December 1974 election, which pitted a reform slate headed by Omar L. Brown against an essentially incumbent slate headed by Harold D. Leu found Leu the winner by some forty-odd votes. The election was set aside by the International Brotherhood of Teamsters pursuant to Brown's internal union appeal as a result, *inter alia*, of irregularities which occurred at the polling places. A panel from the International Teamsters Union conducted a second election in September of 1975 with the same two candidates against one another, only this time Omar L. Brown was the victor by over 500 votes (R. 19; H.D.L. 38). In a desperate attempt to throw the union into trusteeship all the incumbent business agents and officers under Leu resigned *en masse* upon Brown's victory[2] (H.D.L. 39). The attempt failed and Brown assumed office with a mixed group of

---

1. "R" refers to the hearing on preliminary injunctive relief held on January 17, 1978; "J.A." refers to the Joint Appendix, and "H.D.L." refers to the deposition of Harold D. Leu filed March 2, 1979.

2. In prior elections business agents were not summarily discharged (J.A. 13, 26).

experienced and inexperienced business agents (H.D.L. 39-40, 46-47).

December, 1977 brought the third election to Local 20 in less than three years with the same two candidates facing one another. The election was held on December 9, 1977 in Fremont, Ohio; on December 10th and 11th, 1977, in Toledo, Ohio; and on December 12, 1977 in Bryan, Ohio. Because of a blizzard which hit the Northwest Ohio area, the turnout for the election was very poor, especially on the first day of the election held in Fremont, Ohio. Fremont was essentially Brown country. From an eligible voting membership of over 12,500 members, slightly over 3,500 voters were able to make it to the polls to vote. Leu was declared the victor by 29 votes,[3] and the Brown slate filed another protest, complaining of union election violations including the fact that Leu had received thousands of dollars in campaign contributions from non-union employers within the jurisdiction of Local 20 in industries with shops under contract with the local union. The internal protest was investigated by the International Union and denied. Brown then filed a complaint with the Secretary of Labor.[4]

---

3. While Leu won the presidency by this slim margin, Leu's remaining slate was defeated and the members elected all Brown slate officers for the other union positions. *Marshall v. Teamsters Local 20*, 611 F.2d 645, 103 L.R.R.M. 2111 (6th Cir. 1979).

4. After an investigation, the Secretary of Labor determined that employer contributions had affected the outcome of the election and suit was brought in the District Court of the Northern District of Ohio. After a trial on the merits, the trial court agreed with the Secretary and ordered a rerun election under the supervision of the Secretary of Labor. The Local Union filed an expedited appeal to the Sixth Circuit, but the trial court's findings that Leu received employer funds were affirmed. *Marshall v. Teamsters Local 20*, 611 F.2d 645, 103 L.R.R.M. 2111 (6th Cir. 1979).

(Continued on following page)

Needless to say, campaigning on behalf of both slates in the December, 1977 election was vigorous (J.A. 9). Plaintiffs-Petitioners in this case were employed as business agents under the Brown administration, which held office from September, 1975 to December, 1977. Each of them was, at all material times mentioned herein, a member in good standing of Teamsters Local 20. It is undisputed that as business agents each was an *appointed* official of the union appointed pursuant to the Bylaws of the Local by the then President of Local 20, Omar Brown.

After Leu's victory was determined, he was sworn into office on Friday, December 30, 1977, late in the afternoon. The union offices were closed for the weekend, as well as on Monday, January 2, 1978, in celebration of the new year. On January 3, 1978, Leu's first official day in office, he called all of the Plaintiffs-Petitioners to a meeting and fired them wholesale, without notice, giving as his reason that they were "loyal to Brown and not to him" and that "he believed that they would not follow his policies and program to be implemented under his administration" (J.A. 12, 18, 22).

Prior to the wholesale discharge of the business agents Leu did not seek out any of them in order to ask them whether they would work under his administration nor did he seek out other officers of the Local to determine which agents would be willing to support his platforms (J.A. 10-11, 53). He summarily discharged these agents even though they had pledged their support to the Local

---

Footnote continued—

During the supervised rerun election, incumbent Harold D. Leu defeated Omar L. Brown by the narrow margin of 165 votes out of some 6,500 votes cast. Although the rerun election was supervised by the Secretary of Labor, the Brown slate supporters were financially impaired since many of his strongest supporters, the discharged business agents, were still unemployed (J.A. 54-61).

under his administration pursuant to Mr. Brown's request (J.A. 11-12). He was bitter because they had supported Omar Brown and had campaigned against him (J.A. 12, 26; H.D.L. 82-86).

Later as President, Leu undertook a course of action directed at denying the business agents employment within the jurisdiction of Local 20 and aimed at punishing them financially. His action ultimately resulted in many of them being denied many rights as members. Indeed several lost all membership rights and were forced to leave the local union in search of employment in other industries.[5]

Once terminated, most of the agents lost all their seniority, pension and health and welfare rights because they were unable to return to their employment within the Teamster industry (J.A. 28). Agents with as many as 18 years seniority, years of service as stewards, chief stewards and business agents, suddenly were not only out of work, but also were unable to participate any longer in union affairs (J.A. 54-61).

Of the agents who were able to obtain temporary employment within the Teamsters industry, Leu's bad faith in firing them soon became evident. Petitioner Bowman was hired by a trucking company but was terminated before he could complete his probationary period and replaced by an inexperienced employee because of pressure from the union hall (J.A. 54). Petitioner Haney's employment was also sporadic and he similarly was blackballed by the union hall. He suffered severe financial harm and had to file bankruptcy (J.A. 55-56). Plaintiff

---

5. These agents include Frank Howald, and Petitioners Stricklin and Eddington. See Frank Howald's Motion to Withdraw filed with the Court of Appeals on or about June 7, 1979.

Hubbard was also blackballed from completing his probationary period at Roadway Express Company (J.A. 57). Agent Starkey, fortunate to obtain employment, found that as an elected trustee his ability to participate in union affairs was extremely circumvented by the Leu administration. Leu took away his office at the union hall, held trustee meetings without notifying him, and otherwise denied him access to members (J.A. 60-61). In short the termination of the business agents was a very effective weapon of stifling dissent and opposition.

B. The Proceedings Below

Immediately after their termination, the business agents brought suit in Federal Court seeking preliminary injunctive relief to prohibit their unlawful discharge and the infringement upon their protected rights under the Landrum-Griffin Act. Count One of the Complaint alleged a violation and infringement of their equal rights and privileges to vote in the elections and to participate in deliberations of the local union protected by 29 U.S.C. §411(a)(1). Count Two was based on an infringement of their freedom of speech and assembly rights and was based on 29 U.S.C. §411(a)(2). And, Count Three alleged that the discharge of the Petitioners constituted discipline for exercising rights of free speech, assembly, voting and expression of views protected by 29 U.S.C. §411(a)(1) and (2) and contrary to 29 U.S.C. §529.

The District Judge, after hearing, issued a bench opinion essentially holding that the business agents were not protected by the aforementioned statutes since they were *appointed* officials rather than *elected* officials. Shortly thereafter the Respondents filed a Motion for Summary Judgment, supported by carefully selected excerpts

of depositions of the agents.[6] The District Judge again found that the Petitioners had not asserted a cause of action since they were *appointed* officials rather than *elected* officials, and not surprisingly again concluded that their rights as union members had not been affected.

The affidavits presented by the Petitioners sharply contradicted this finding and demonstrated that Leu's bad faith retaliatory firing was part of a scheme to blackball the agents from employment in order to deny them access to other Teamster members and to eventually force them into voluntary withdrawals from the union[7] (J.A. 54-60). Indeed the trial court refused to examine Leu's motives or whether the business agents' rights as union members had been affected by the termination and subsequent retaliation which had taken place. The Court stated,

> "In any event, this Court does not have a basis to expand the focus of this litigation to the question whether the union membership rights of the Plaintiffs had been violated. If these serious allegations can be established, they must be the substance of a separate action." Pet. App. A9

After the dismissal, the business agents sought an appeal to the United States Court of Appeals for the Sixth Circuit. The three judge panel for the Sixth Circuit affirmed the trial court's decision and held that the business agents had not alleged a valid cause of action

---

6. Since the agents were unemployed they couldn't afford to obtain copies of their lengthy depositions to oppose the respondents' motions, but several affidavits were filed in opposition. See J.A. 52, 54-61.

7. An involuntary withdrawal card is mandatory under the IBT Constitution after six (6) months of unemployment. See article XVIII, §5(a), Jt. Ex. 2., R. 27.

against the Respondents. Pet. App. A1-A3. The panel never addresed the factual issues in dispute nor did it examine at length the Trial Court's decision but essentially adopted its findings and opinions. Pet. App. A1-A3.

SUMMARY OF ARGUMENT

The decisions below, if allowed to stand, will substantially erode the guarantees of the Labor-Management Reporting and Disclosure Act. By adopting the minority line of authority which permits discharges of appointed union officials and union employees and by refusing to extend the protection of Landrum-Griffin to the business agents in the present case, the Sixth Circuit ignored the policy of Congress in assuring democratic self-government within labor organizations. The overwhelming weight of authority finds retaliatory discharges to be unlawful whether viewed as discipline under §529 or an infringement under §412. These courts generally recognize that union members cannot be placed in the dilemma of choosing between their rights of free expression under §101(a)(1) and (2) of the LMRDA and their jobs since Congressional policy mandated by Landrum-Griffin would be frustrated.

The decisions relied upon by the Sixth Circuit are readily distinguishable with the exception of *Wambles v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America*, 488 F.2d 868 (5th Cir. 1974). The *Wambles* decision refuses to protect the officer-member or employee-member relationship and would find that the officer or employee relationship is not protected by Landrum-Griffin but only that the membership relationship is so protected. *Wambles* is based on several false assumptions including the assumption that courts should not interfere to protect the Landrum-Griffin safeguards

in order to insure union democracy or rights of appointed union officials. The very genesis of Landrum-Griffin demonstrates a clear Congressional policy that courts must intervene to protect such rights and the overwhelming weight of authority recommends intervention in order to eliminate dictatorial practices and safeguard officers' speech.

In the instant action, the retaliatory discharge of the business agents was motivated by Respondent Leu's ill will and bad faith resulting from a vigorous and heated political campaign. Petitioners submit that his bad faith was not only demonstrated by the discharges of the business agents as his first official act in office, but also by his subsequent action in attempting to blackball them from finding employment within the Teamster industry knowing that after a period of time they would be forced into withdrawal from the union. Assuming *arguendo* that only membership rights are protected by Landrum-Griffin, the facts in the instant case demonstrate that the discharges did indeed interfere with the business agents' rights as members since they no longer were able to participate as fully in union affairs as they lost their voice and vote on the Stewards' Council, the governing body of the local union. Indeed several business agents were financially forced to leave the union and the Teamster industry in search of employment elsewhere.

ARGUMENT

I. THE COURTS BELOW ERRED BY ADOPTING THE MINORITY LINE OF AUTHORITY AMONG A SPLIT IN THE CIRCUIT COURTS ON WHETHER UNION EMPLOYEES OR OFFICERS WHO ARE ALSO UNION MEMBERS HAVE A CAUSE OF ACTION UNDER THE LMRDA WHEN THEY ARE DISCHARGED IN RETALIATION FOR EXERCISING RIGHTS GUARANTEED THEM AS UNION MEMBERS.

A. The Law

As a result of evidence discovered in Congressional hearings that some labor organizations were engaging in acts of corruption, dictatorial practices and racketeering, Congress felt it necessary to take remedial action in the form of legislation to insure the processes of democratic self-government within labor organizations. The act which governs and controls the internal affairs of a labor organization is the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C.A. Section 401 *et seq.*, commonly known as the Landrum-Griffin Act.

Title 1 of the Act, known as the "Bill of Rights of Members of Labor Organizations", provides certain protection for members of labor organizations directly applicable here. Section 411(a)(1) and (2) provide as follows:

> "(a)(1) *Equal Rights*—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate

in the deliberations, and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws."

"(2) *Freedom of speech and assembly*—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings; *Provided*, that nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations."

Section 529 of the same Act provides additional safeguards for union members as follows:

"It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this chapter. The provisions of Section 412 of this title shall be applicable in the enforcement of this section.[8]

---

8. Section 412 is the jurisdictional grant and provides as follows:

"Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this sub-

(Continued on following page)

Simply stated, the business agents were fired for exercising their rights to vote in elections of officers of their choice, and for exercising their rights to meet and assemble with other members to express their views, arguments and opinions upon candidates in the 1977 officers' election for Teamsters Local 20. Their acts and conduct are and were protected by the provisions of §411(a)(1) and (2) of Landrum-Griffin.

In addition, it is the position of the Petitioners that §529 prohibits the Respondents from "otherwise disciplining" its members for exercising rights to which they are entitled under §411(a)(1) and (2). Thus their removal as business agents was such prohibited discipline.

Not surprisingly, the precise issues raised in this case have been faced by a number of Circuits. The overwhelming weight of authority holds that the actions engaged in by Respondent Leu by his wholesale firing of the business agents for their political support of Omar Brown is conduct prohibited by Landrum-Griffin. *Grand Lodge v. King*, 335 F.2d 340, 56 L.R.R.M. 2639 (9th Cir., 1959), *cert. denied*, 379 U.S. 920, 57 L.R.R.M. 2512 (1964); *Bradford v. Textile Workers*, 563 F.2d 1138, 96 L.R.R.M. 2690 (4th Cir., 1977); *Wood v. Dennis*, 489 F.2d 849, 84 L.R.R.M. 2662 (7th Cir., 1972), *cert. denied*, 415 U.S. 960, 85 L.R.R.M. 2530 (1974); *Gabauer v. Woodcock*, 520 F.2d 1084, 89 L.R.R.M. 2961 (8th Cir., 1975), *cert. denied*, 423 U.S. 1061 (1976); *Cooke v. Orange Belt District Council*, 529 F.2d 815, 91 L.R.R.M. 2349 (9th Cir., 1976); *Retail Clerks Union, Local 648 v. Re-*

Footnote continued—

chapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred or where the principal office of such labor organization is located."

tail Clerks International Association, 299 F. Supp. 1012, 70 L.R.R.M. 3366 (D.D.C. 1969); *DeCampli v. Greeley*, 293 F. Supp. 746, 69 L.R.R.M. 2786 (D.N.J. 1968); *George v. Bricklayers Union*, 255 F. Supp. 239, 62 L.R.R.M. 2478 (E.D. Wisc. 1966); *Price v. United Mine Workers*, 376 F. Supp. 1015, 86 L.R.R.M. 2577 (D.D.C. 1974), *aff'd without op.*, 515 F.2d 1018 (D.C. Cir., 1975), 90 L.R.R.M. 2844; *Alvino v. Bakery Workers Union*, 46 L.R.R.M. 2812 (D.D.C. 1960), approved in *Bakery & Confectionery Workers International Union v. Ratner*, 335 F.2d 691, 56 L.R.R.M. 2432 (D.C. Cir., 1964); *Lamb v. Miller*, 107 L.R.R.M. 3064 (D.C. Cir., 1981); *Maceira v. Pagan*, 649 F.2d 8 (1st Cir., 1981). For contra authorities *see Newman v. Local 1101, Communication Workers of America*, 570 F.2d 439 (2d Cir., 1978); *Wambles v. International Brotherhood of Teamsters, etc.*, 488 F.2d 888 (5th Cir., 1974); *Martire v. Laborers' Local Union* 1058, 410 F.2d 32 (3d Cir.), *cert. denied*, 396 U.S. 903 (1969).

B. The Majority Theory

There are two established theories which support the business agents' position in this case. First, the vast majority of cases which have dealt with the subject and which are noted above have held that the removal from a union position as a result of the expression of political views infringes upon rights protected by 29 U.S.C.A. §411 (a) (1) and (2) and thus to be fired for exercising those rights is a form of discipline prohibited by 29 U.S.C.A. §529. See *Grand Lodge v. King*, 56 L.R.R.M. at 2642; *Wood v. Dennis*, 84 L.R.R.M. at 2665-2666; *Gabauer v. Woodcock*, L.R.R.M. at 2965-2966; *Cooke v. Orange Belt District Council*, 91 L.R.R.M. at 2351-2352. *See also Lamb v. Miller*, 107 L.R.R.M. 3064 (D.C. Cir., 1981); *Maceira v. Pagan*, 649 F.2d 8 (1st Cir., 1981).

Additionally, even absent a finding by this Court that the removal from appointive union office for engaging in

political activity was "discipline" within the meaning of 29 U.S.C.A. §529, it is submitted that 29 U.S.C.A. §411 (a)(1) and (2) present an independent basis via 29 U.S.C.A. §412 to prevent retaliation by a local union or its officer, in any form, for engaging in acts of voting, free speech or assembly protected by the Act. *Salzhandler v. Caputo*, 52 L.R.R.M. 2910, 2911; *Miller v. Holden*, 535 F.2d 912, 95 L.R.R.M. 2152, 2155 (5th Cir., 1976).[9]

Perhaps the matter was most succinctly stated by Judge Gesell of the District Court of the District of Columbia when he said simply:

> "Union members cannot, under the terms of the Act, be placed in the predicament of choosing between the right of free expression under §101(a) [29 U.S.C.A. §411(a)] and their jobs. This fundamental concept of the goals and prohibitions of the LMRDA is supported by the decision[s] in this District .... (citations omitted)." *Retail Clerks Union Local 648 v. Retail Clerks International Association, supra*, at 70 L.R.R.M. 3371.

In short, the evidence below demonstrated that after a vigorous election campaign in which the business agents supported the opponent of Respondent Leu, they were summarily discharged in bad faith for engaging in the right to vote and the right to freely express their views on

---

9. The Fifth Circuit was one of those few circuits which held that removal from appointive office was not the kind of "discipline" contemplated by 29 U.S.C.A. §529. See, *Wambles v. International Brotherhood of Teamsters*, 488 F.2d 888 (5th Cir., 1974). The decision in *Miller v. Holden, supra*, undercut *Wambles* in two ways. First, *Holden* finds an independent cause of action for removal from union office in political retaliation in 29 U.S.C.A. §411(a)(1) and (2) through §412 regardless of the applicability of §529. In addition, *Wambles* is explicitly confined to its facts at 95 L.R.R.M. 2155.

The Third Circuit also rejects the majority view, *Sheridan v. United Brotherhood of Carpenters*, 306 F.2d 152, 50 L.R.R.M. 2637 (3d Cir., 1962). *But compare DeCampli v. Greeley, supra*, at 69 L.R.R.M. 2786, which distinguishes *Sheridan* and relies on *Grand Lodge v. King*.

union candidates for election; rights protected by the LMRDA (J.A. 11-12, 26, 54-61).

It has been clear since its inception that the LMRDA was *to be read broadly* to support the Congressional mandate of permitting union members to participate in the political affairs of their union without interference or retribution. See, *Wirtz v. Hotel Employees*, 391 U.S. 492, 68 L.R.R.M. 2305 (1968); *Wirtz v. Bottleblowers Assn.*, 389 U.S. 463, 67 L.R.R.M. 2129 (1968); *Calhoun v. Harvey*, 379 U.S. 134, 57 L.R.R.M. 2561 (1964); *Bakery & Confectionery Workers Intern'l U. v. Ratner*, 335 F.2d 691, 56 L.R.R.M. 2432 (D.C. Cir., 1964); *Kuebler v. Lithographers Local 24-P*, 473 F.2d 359, 82 L.R.R.M. 2717 (6th Cir., 1973).

In the case at bar it is not even necessary to take a broad view of the Act's proscriptions. Removal from office because of political expression whether viewed as "discipline" under §529 or an "infringement" under §412 is equally unlawful and clearly works to frustrate the Congressional policy mandated by the Act. There are clear lines of authority, supporting either proposition which, it is respectfully urged, this Court should follow.

C. The Minority Authority—Theory and Distinctions

The Courts below refused to protect Petitioners from the retaliatory discharge by Respondent Leu and followed a minority viewpoint permitting discharge of union officers and employees. This viewpoint uses a distinction between rights as union members and rights as a union officer or employee in upholding discharges in the latter cases. The Courts below relied upon *Martire v. Laborers' Local Union 1058*, 410 F.2d 32 (3d Cir.), *cert. denied*, 396 U.S. 903 (1969);[10] *Newman v. Local 1101, Communication Workers,*

---

10. The District Court relied on *Martire* but the Sixth Circuit did not.

570 F.2d 439 (2nd Cir., 1978); *Sheridan v. United Brotherhood of Carpenters*, 306 F.2d 152 (3d Cir., 1962); and *Wambles v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America*, 488 F.2d 888 (5th Cir., 1974). Three of the decisions are easily distinguishable and the fourth should not be followed.

In *Martire*, the business manager of the local union was suspended after a trial board's findings that Martire was guilty of *negligence* and *incompetence*. 410 F.2d at 34. The charge against Martire arose from the fact that members of the local union had been employed for some eighteen months on a project at a wage less than that fixed by the Collective Bargaining Agreement. *Id.* at 34. The trial court found and the Third Circuit held that,

> "The business manager of a local union may be disciplined for negligence and incompetence in the performance of his duties, and that such duties include responsibility for seeing that employers pay the required union wage to members of the union." *Id.* at 38.

Thus *Martire* did not deal with the summary discharge of union business agents for exercising their political rights during a union election. On the contrary, Martire was discharged for *negligence*, after an investigation and trial before a union body.

In *Newman*, the 2nd Circuit reversed the trial court for granting a preliminary injunction enjoining the Defendants from refusing to certify Newman and other Plaintiffs as job stewards because of the exercise of free speech. *Newman* is readily distinguishable because the Plaintiffs in that case, unlike the Petitioners

> ". . . had engaged in disruptive conduct which prevented the president of Local 1101 from engaging in

a discussion with members concerning CWA's preparation for its upcoming negotiation with Bell System representatives, scheduled to begin in February, 1977, regarding the terms of a new Collective Bargaining Agreement to replace the existing one, which would expire in August, 1977 . . .

"Newman vigorously opposed the Local's policy and program for bargaining and supported a militant approach, which would require the CWA to mobilize its membership for a strike to be called unless Bell agreed to a thirty-two hour week at forty hours pay or a no lay-off clause. Furthermore, Newman advocated the organization of monthly lunch hour rallies of workers at various Bell buildings over the five month period preceding expiration of the existing contract to mobilize union opposition to any management proposal that did not meet this, and other, minimum demands." 570 F.2d at 439.

Thus, allegedly Newman actively undertook a course of conduct designed to sabotage and subvert the union's relationship with employers and attempted to interfere with the administration's bargaining process. See also 570 F.2d 446-447. The Petitioners in the instant case did not engage in any disruptive conduct and on the contrary were summarily discharged after having pledged support for the newly elected president and his administration (J.A. 11-12).

Moreover the record in Newman was not clear that the purpose or the effect of decertifying Newman as a job steward was to discourage his exercise of free speech rights as a member. *Id.* at 448. Indeed, Newman's only monetary loss from decertification "bordered on the nominal—payment of $20.00 per union meeting to cover his

expenses for each of four such meetings held annually." *Id.* at 448.

Most of the Petitioners in the instant case have suffered serious financial harm not only because of the loss of employment but also due to Leu's subsequent attempt at blackballing them from the industry. Petitioner Haney had to file bankruptcy (J.A. 55-60). Several have been forced out of the Teamster industry in search of other employment and have lost all rights as union members. See n.5. In addition, many of the business agents lost as many as 18 years seniority, pension rights and other health and welfare benefits when they were terminated (J.A. 54-61).

Finally, it should be noted that the Second Circuit appears to have cut back and clarified its early decision in *Newman I* upon rehearing after remand. See *Newman v. Communication Workers*, 597 F.2d 833, 101 L.R.R.M. 2265 (1979).

Upon remand the trial court in *Newman II* concluded that:

> "Despite Newman's opposition to policies of the local's management, he had faithfully and effectively performed his duties as a job steward, explaining to members the leadership's position on policies with which he disagreed, supporting the local's fund raising and petition drives despite his own belief that they were not in the members' best interest, and carrying out any local policy or program he was directed to implement." 101 L.R.R.M. at 2266.

The trial court further found that:

> "Newman had not interrupted, much less disrupted, the December 1, 1976 Broad Street meeting of some

local members at which President Dempsey had presented the local's proposed policies for impending negotiations on their behalf with the employer."

Indeed the Second Circuit acknowledged that the trial court found that the local's purpose and the effect of the:

"Decertification of Newman was not to discipline him for failure to properly perform his duties as job steward but to stifle not only Newman but members generally from exercising their rights openly to criticize the local's management, to publish their views and to run for office." 101 L.R.R.M. at 2267.

Petitioners submit that this is precisely the effect that Respondent Leu's wholesale discharge of the Petitioners in the instant case was also designed to accomplish (J.A. 54-61). By discharging the business agents, the message to the 12,500 members of Teamsters Local 20 was made clear by the Respondents. Oppose, criticize, or campaign against them and the Respondents would take action not only to terminate your employment, but to prevent your reemployment and eventually terminate your membership within the Teamster union.

Sheridan is also distinguishable. First the decision represents the view of a single judge of the Third Circuit, Judge Kalodner. Judge Hasty concurred in the result upon a different ground and Judge McLaughlin dissented.

Moreover, Sheridan had been guilty of malfeasance in office as a business agent since he had put a man to work with less layoff time than another laid off member. Sheridan was tried for his misconduct and malfeasance in this regard. 306 F.2d at 154. Thus, in many respects *Sheridan* is essentially a malfeasance fact situation, similar to *Martire*.

Finally, and more importantly, what is easily significant and distinguishable about *Sheridan* is that *Sheridan* relies on the fact that the "overriding purpose of the Labor-Management Reporting and Disclosure Act was to insure members of unions the right to self-government and union democracy." 306 F.2d at 158. Thus, Judge Kalodner emphasized that the business agent had been removed from office by *vote of the membership of the union.* In the present case, however, the business agents (including two elected officers) were removed from office in retaliation for supporting Respondent Leu's opposition candidate, Omar Brown. This distinction was also recognized by the Seventh Circuit in *Wood v. Dennis,* 489 F.2d 849, 854.

The *Wambles* decision, relied on by the Sixth Circuit, is thus left standing alone. While not as readily distinguishable, even *Wambles* recognized that an appointed union official's loyalty should be to the union as an institution and not to the personal political desires of a particular candidate. The Fifth Circuit stated that:

> "Loyalty should be to the union and not to a personal fiefdom beyond the reach of the membership . . ." 488 F.2d 890.

Petitioners submit that the *Wambles* rationale should be rejected. The arguments in favor of the *Wambles* position are not persuasive, but on the contrary fallacious.[11]

D. The Fallacy of Wambles

In *Wambles* the Fifth Circuit stated that,

> "As a practical matter, the union president should be able to work with those who will cooperate with his programs and carry out his directives. It can be

---

11. The Fifth Circuit later undercut *Wambles in Miller v. Holden, supra.* See n. 9.

argued that an appointed office holder under the president who had opposed him in the election does not guarantee obstructionist policies while he serves in his position as an appointed union official and that before the appointed official be discharged for cause he would have to show an actual conflict of interest. This is a rather charitable view of persons recently involved in political conflict. A more realistic view would be that in a great majority of cases the friction generated in the election campaign would in fact seriously impede the successful candidate's implementation of his program approved by the membership electing him.

"To extend the protection of labor's "Bill of Rights" §101(a)(1) (29 U.S.C. §411(a)(1) and "Free Speech Rights", §101(a)(2), U.S.C. §411(a)(2) to such office holders would, in effect, give such office holders a lifetime job except on dismissal for cause. The elected officials necessarily rely on appointed officials to implement policies and plans presumably approved by the union membership in the election. To tie the president's hands, an elected official, by not allowing him to discharge without cause or for any reason those who must serve under him, would so restrict the elected officers in their discharge of their duties that elections could be meaningless.' " 488 F.2d 889-890.

Wambles is thus based in part upon an assumption that union officials appointed by the losing candidate will not support the policies and programs of the successful candidate and this alone is grounds for discharge. In the instant matter, however, the Petitioners and the remaining discharged business agents had all pledged their support to serve the administration under Harold Leu. They did this at the request of Omar Brown since they recognized their duty to the union as an institution (J.A. 11). While Peti-

tioners recognize that appointed officers or employees of the union may be discharged for "cause", Respondents cannot be permitted to extend "cause" to retaliation for exercising membership-officer or employee-member rights of political expression guaranteed by the Act. *Grand Lodge v. King, supra; Salzhandler v. Caputo,* 316 F.2d 445 (2nd Cir., 1963).

The *Wambles* assumption that appointed officials would be frozen in office for life is also without merit. Both appointed and elected officials can be removed for harmful conduct towards the labor organization as an institution or conduct that would interfere with the performance of the labor organization's legal or contractual obligations. This is clearly set out in the proviso to §411(a)(2). Furthermore, the labor organization has the right to subject such members' conduct to reasonable rules with respect to meetings and deliberations. 29 U.S.C. §411(a)(1). Neither Respondent Leu nor Respondent union has a legitimate interest in preventing internal dissent nor stopping insurgent candidates from running for office.

The *Wambles* court further assumed that the Landrum-Griffin rights of appointed union officials should be ignored otherwise, "the court [would be forced] into a thicket of subtleties and hypocrisies of charges in an effort to ascertain whether or not the charges were bona fide or merely a cloak for dismissal for other reasons." *Id.* at 890. This viewpoint is erroneous and must be rejected for it assumes that the democratic processes in union elections will proceed without the need for judicial interference. Without the courts to protect the Landrum-Griffin safeguards there would be no union democracy or rights of union members.

As noted earlier, the very genesis of Landrum-Griffin was because of clear evidence discovered in Congressional

hearings that some labor organizations were engaging in acts of corruption, dictatorial practices and racketeering. Courts must intervene to safeguard the rights of union members otherwise such rights would be rights of paper rather than practice. Judicial enforcement and intervention is necessary and for the most part has been followed by the majority authority and furthermore encouraged by the commentators.[12] Petitioners cannot overemphasize that the Congressional purpose behind the Act was to eliminate dictatorial practices in unions.

> "The provisions of the Act are manifest, its reach is extensive and the obligation of the Federal Courts to carry forward the sound underlying Congressional mandate is beyond dispute." *Retail Clerks Union, Local 648 v. Retail Clerks International Association*, 299 F. Supp. 1012, 1017, 70 L.R.R.M. 3366 (D.D.C. 1969).

Other courts have recognized that suppression of freedom of speech is not limited to non-interference with vocalization. "Rights of communication cannot be so restricted as to be meaningless, and it cannot be said that freedom of speech as a member is unimpaired when that which made his speech effective is removed for improper disciplinary reasons." *Wood v. Dennis* at 855. Petitioners submit that without protection of officer speech there wouldn't be effective criticism since the lower officers are usually the most articulate and in the best position to discover evidence of wrongdoing.

> "A business agent is just such a union official to whom the membership looks for guidance, be he elected or appointed and be he an officer or an employee. It is widely known that in many unions the business agent

---

12. See Summers, *Judicial Settlement of Internal Union Disputes*, BUFFALO LAW REVIEW, Volume 7 at 423.

is the most important administrative representative. To reduce him to silence through fear of disciplinary reprisal is tantamount to saying that the member who succeeds in becoming an official of the union forfeits membership rights guaranteed to him by the LMRDA. Certainly, Congress never contemplated the imposition of such a 'Hobson's choice'. A contrary construction would destroy a member's incentive to seek office, or other responsible position." *DeCampli v. Greeley*, 293 F. Supp. 746, 752 (D.N.J. 1968).

Moreover, those who hold responsible offices in a labor organization may well be in the best position effectively to challenge the incumbent group which, in the nature of things, seeks to be entrenched. Members holding these senior posts perhaps best understand the actions of a union hierarchy and marshall political support when situations arise that can only be properly resolved by the democratic process which the LMRDA guarantees.

"To withhold even partially the full rights of free expression from such members by allowing their superiors to discipline them in the name of policy or otherwise because they have unsuccessfully opposed those in authority would effectively weaken the idea of union democracy." *Retail Clerks Union, Local 648*, at 1021.

Furthermore, the right to engage in such intraunion political activity is guaranteed to union members by §101 (a) (1) and §101 (a) (2) of the Act. Nothing in the statutory language excludes members who are officers nor is there anything in the Act to distinguish between appointed officials and elected officials. As the court stated in *Grand Lodge v. King*, 335 F.2d 340, 344 (9th Cir., 1964):

". . . to exclude officer-members from their coverage would deny protection to those best equipped to keep

union government vigorously and effectively democratic. We therefore conclude that §101(a)(1) and (2) apply to officer-members such as Plaintiffs."

No compromise may be had with the fundamental requirement of union democracy guaranteed by the LMRDA. The majority authority recognizes this principle and has readily intervened to protect freedom of speech political rights of members, officers, and appointed union officials.[13] Consequently, reliance by the Courts below upon *Wambles* is erroneous since the *Wambles* rationale itself is erroneous. As the Second Circuit noted in *Newman II*,

"A fine line must be drawn between what might be termed insubordination on the one hand and freedom of speech on the other." 101 L.R.R.M. at 2267.

E. Leu's Bad Faith Motivation

In determining whether the Petitioners' Landrum-Griffin rights have been violated, several courts suggest that it is necessary to analyze Respondent Leu's motivation in light of conflicting evidence contrary to his assertions.

"(M)otivation is crucial for the policy and practice must be viewed in one light if it rests solely on considerations of sound union management principles and in quite a different light if it was part of their plan or program to thwart opposition and entrench (a union officer) and his immediate associates in office . . . where a union policy and practice is promulgated in order, among other things, to place obstacles in the way of effective union democracy and appears to have this effect . . . the court cannot give that policy any

13. See the cases supporting the majority position set forth in Sections I A & B.

recognition as it offends both equity and the provisions of the LMRDA (citations omitted) . . .

Thus defendants not only failed to establish the existence of an organization policy and practice but even if they had succeeded the policy and practice, *under the circumstances* cannot lawfully be implemented so as to remove unsuccessful candidates from *appointed office.*" *Retail Clerks Union Local 648 v. Retail Clerks International Association,* 70 L.R.R.M. 3366 at 3370. See also *Bradford v. Textile Workers, Local 1093,* 96 L.R.R.M. 2690 (4th Cir., 1977) and *Miller v. Holden,* 535 F.2d 912, 915.

At a hearing for preliminary relief, Respondent Leu testified that he discharged the Petitioners solely because of their political support for Omar L. Brown (J.A. 24). In addition, it was his "belief" that the Petitioners would not work under his administration (J.A. 26). Indeed Respondent Local 20 attached Respondent Leu's affidavit to their motion for summary judgment (J.A. 34).

In his affidavit Leu states that he "removed all [Petitioners] in the above-captioned matter from their appointed positions on January 3, 1978 as business agents for IBT Local 20 for the reasons that Petitioners *refused* to support (his) presidency and his programs"! The bad faith motive of Respondent Leu is brought into focus by *comparing* this affidavit with his testimony presented in his deposition (J.A. 53). The following is illustrative:

"Question: (By Mr. Bolotin) Prior to January 3, the date of discharge, did you ever seek out any of the named [Petitioners] and ask them whether they would work under your administration?

Answer: (By Mr. Leu) No.

Q: Did you ever seek out Danny Farbrother,[14] Jim Cassidy, Don Sarver, or Mary Jane Gill, and ask them whether, in your opinion, the named [Petitioners] would work under your administration?

A: No." (H.D.L. 103).

The following is also illustrative:

"Q: (By Mr. Bolotin) Did you seek out, once you won the election and were installed, did you seek out any of the business agents that you discharged; that is, the named [Petitioners] and ask them whether they would support your campaign, the platforms and so forth prior to your discharging them on January 3?

A: (By Mr. Leu) No.

Q: And, isn't it true that between the time you were installed and the time that they were discharged that the named [Petitioners] did not oppose any of your platforms, openly give speeches, or oppose your platforms?

A: To the best of my knowledge, I don't know.

Q: And you didn't consider that when you made your decision to replace them, correct?

A: That's correct." (H.D.L. 113; J.A. 53).

Thus on the one hand Respondent Leu stated in an affidavit that he removed the Petitioners from their appointed positions because "they refused to support his presidency and his programs." On the other hand, he states in his deposition as well as during the hearing for

---

14. Leu evidently did seek out some agents for he didn't fire Farbrother, Cassidy, Sarver and Gill possibly because they supported him in the first two election contests against Brown (R. 48-49, 54-55).

preliminary injunctive relief that he never asked them to stay in the first instance.

Leu was bitter because of the vigorous campaign and the campaign propaganda that referred to state court cases finding him guilty of misappropriation of money from the union during his first term in office as president (H.D.L. 82). It was precisely this bitterness that led to the retaliatory discharge of the Petitioners and to the subsequent blackballing of many of the business agents from employment within the Teamster industry (J.A. 54-61).

F. The Discharge of Petitioners Was Designed to Interfere With Their Rights As Members

In relying upon the 5th Circuit's decision in *Wambles*, the Courts below attempted to distinguish between the rights of Petitioners as employees and the rights of Petitioners as members. This distinction while recognized in *Wambles* should not only be accorded little weight, but cannot be followed herein because of factual disputes concerning whether Petitioners' rights as union members were affected, even assuming *arguendo* that the distinction should be made.

Teamsters Local 20 does not provide pursuant to its Bylaws for membership participation in the normal weekly and monthly affairs of the local union. Because of its size, over 12,500 members, the Bylaws of Teamsters Local 20 provide that the affairs of the local are presented to a Stewards' Council, a unique institution as far as union locals go, for deliberation and voting.

> "§1. There shall be a Stewards' Council. The Stewards' Council shall be composed of delegates who are the officers, shop stewards and full time *business agents* or representatives of Local 20. The Stewards'

Council, like the Congress of the United States, shall be the legislative assembly of the Local Union. As provided in Section 3 of this Article, the *Stewards' Council is the governing body of the Union* and as such imposes upon each and every delegate a serious responsibility which cannot be taken lightly. This responsibility includes the duty to attend meetings of the Stewards' Council, to participate actively in the discussions therein, and to report back the proceedings of each Stewards' Council to their unit or industry.

§2. Except as may be otherwise provided in this Constitution and Bylaws, the Stewards' Council acting upon the Executive Board's recommendation is authorized and empowered to manage, invest, expend, contribute, use and acquire Local Union funds and property in the pursuit and accomplishment of the objectives set forth in the Constitution of the International Union and these Bylaws. The Stewards' Council is hereby empowered, in addition to such other powers as are set forth herein or are conferred by law, to act upon the recommendations of the Executive Board to:

A. Borrow and loan, directly or indirectly, any monies for such purposes and with such security, if any, as it deems appropriate, and with such arrangement for repayment as it deems appropriate, all to the extent permitted by law.

B. Transact all business and to manage and direct the affairs of the Local Union between Stewards' Conventions except as may otherwise be herein provided.

C. Do all acts, whether or not expressly authorized herein, which the Stewards' Council may

deem necessary or proper for the protection of the property of the Local and for the benefit of the organization and members . . . .

§4. Voting on all problems or issues which come before the Stewards' Council shall be on the basis of one vote for each regular steward and only those stewards present shall be entitled to any voting power.

§5. All stewards must be members in good standing to perform any functions conferred upon them by this Constitution and Bylaws . . ." (Emphasis added) Local 20 Bylaws, Article V. Jt. Ex. 1.; R. 27.

Only stewards, officers and business agents have the right to participate and vote on matters brought to the floor of the Stewards' Council. For most unions, the transactions of the union are brought before monthly membership meetings wherein the *members* are provided with an opportunity for passing judgment and voting on said matters.

Prior to their appointment as business agents for Teamsters Local 20 all the Petitioners were elected stewards and had a voice and vote on the floor of the Stewards' Council (J.A. 54-61). Also as appointed business agents the Petitioners had a voice and vote on the matters brought before the Stewards' Council. Respondent Leu knew that by discharging the Petitioners as business agents almost all would be unable to return to their prior employment (J.A. 28). As unemployed Teamsters, the agents cannot be stewards for any particular barn or employer. Thus, most dissension and opposition was effectively eliminated (J.A. 54-61).

In addition, it is a factual dispute whether Respondent Leu discharged the agents as part of a scheme to blackball the agents from the Teamster industry by applying pressure on employers to prevent them from rehiring the Peti-

tioners within the industry. Pursuant to the International Constitution, if a Teamster member is not employed within the industry for six (6) months, he is issued a withdrawal card and loses all voice and vote on union matters.

> "§5(a) . . . When a member becomes unemployed in the jurisdiction of the Local Union, he *shall* be issued an honorable withdrawal card upon his request. If no request is made, such honorable withdrawal card may not be issued before the passage of two (2) complete months after the month in which the member first becomes unemployed. An honorable withdrawal card *must be issued no later* than six (6) months after the month in which the member first becomes unemployed, if he is still unemployed at that time . . . ." IBT Constitution, Article XVIII, §5(a). Jt. Ex. 2; R. 27.

Indeed, Petitioners Stricklin, Howald and Eddington were forced into finding employment outside of the industry and have lost all membership rights of the local union. Agent Howald even withdrew from the appeal.[15]

For the Petitioners who were able to obtain re-employment within the industry, their participation in union affairs has been suppressed by Respondent Leu and his followers. Members who are not stewards are no longer permitted to attend Stewards' Council meetings held monthly in the Steinberg Auditorium. Instead, members have been forced into another auditorium, the Beck Auditorium, where a speaker system is set up so that they can hear what is going on but cannot directly participate (J.A. 48, R.E. 58-59).[16]

---

15. See Motion and Entry to Withdraw filed with the Court on or about June 7, 1979.

16. R.E. refers to the deposition of Richard Eddington filed August 31, 1978.

Petitioner Finnegan is the only business agent who since his discharge had been re-employed and elected as a steward in a Teamster barn. However, whenever he attempts to speak on matters brought before the Stewards' Council, Harold Leu's business agents boo and shout him down and prevent him from exercising a free voice on union matters (J.A. 58-59).

Being an elected official for Teamsters Local 20, is of little significance if you are not employed as a business agent. Agent Starkey was elected as trustee. However, once discharged as a business agent, Respondent Leu took away his office at the union hall so that he no longer has the same access to the members (J.A. 60-61). Indeed, Harold Leu prevented Agent Starkey from attending Executive Board meetings by conveniently failing to notify him when the meetings are being held and thus has directly prevented him from exercising his duties as an elected union official by denying him his voice and vote on the Executive Board for Teamsters Local 20 (J.A. 60-61).

The message to the thousands of other Teamster members evidenced by the suffering of their former business agents, the Petitioners herein, is clear. Many members are afraid to talk to the Petitioners because they fear that if they ever have a grievance they will have to rely on the union hall for support in order to win same (R.E. 69).

Thus, when the minority rationale is applied to the uniqueness of Local 20 and to the facts in the instant case, the discharge of the Petitioners from their *appointed* positions cannot be justified. The bad faith motive of Respondent Leu is evidenced by the wrongful discharge of the Petitioners and by his continuing campaign to deny them participation in union matters. Respondent Leu's bad faith motive is also demonstrated by his continued

attempts to starve the Petitioners into submission and to blackball them from the Teamster industry. Respondents' pattern of activity is a deliberate attempt to suppress dissent and a direct infringement upon Petitioners' rights under Landrum-Griffin. It is for this very reason that the majority of courts have found bad faith retaliatory discharges of *appointed* officials also to be unlawful. *Grand Lodge v. King*, 335 F.2d 340, 56 L.R.R.M. 2639 (9th Cir. 1959), *cert. denied*, 379 U.S. 920, 57 L.R.R.M. 2512 (1964); *Retail Clerks Union Local 648 v. Retail Clerks International Association, supra; George v. Bricklayers Union*, 255 F. Supp. 239 (E.D. Wisc. 1966); *Price v. United Mine Workers*, 376 F. Supp. 1015, 86 L.R.R.M. 2577 (D.D.C. 1974), *aff'd without opinion*, 515 F.2d 1918 (D.C. Cir., 1975), 90 L.R.R.M. 2844; *Alvino v. Bakery Workers Union*, 46 L.R.R.M. 2812 (D.D.C. 1910), approved in *Bakery & Confectionery Workers International Union v. Ratner*, 335 F.2d 691, 56 L.R.R.M. 2432 (D.C. Cir., 1964).

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals and District Court should be reversed. Congress did not intend in adopting Landrum-Griffin that union members should be discharged for exercising rights in union elections just because they were appointed officials. To permit this would discourage union democracy for union members with years of experience and service would refuse to accept appointed positions and release their places of seniority with former employers. Moreover those members who did accept an appointed position would be placed upon the horns of a dilemma for no matter which candidate they elected to support, they would face the potential consequence of discharge upon that candidate's

defeat. Union democracy would not be fostered but on the contrary would only be impaired.

Respectfully submitted,

SAMUEL G. BOLOTIN
(Counsel of Record)
BOLOTIN & BOLOTIN CO., L.P.A.
2nd Floor Gardner Building
506 Madison Avenue
Toledo, Ohio 43604
(419) 241-1900
Counsel for Petitioners

Office - Supreme Court, U.S.
FILED
DEC 31 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-2150

In the Supreme Court of the United States

October Term, 1980

DONALD FINNEGAN, *et al.*,
Petitioners,

vs.

HAROLD D. LEU, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENTS

JACK GALLON
TED IORIO
Counsel of Record
JEFFREY JULIUS
TOBIE BRAVERMAN
GALLON, KALNIZ & IORIO CO., L.P.A.
3161 N. Republic Boulevard
Toledo, Ohio 43615
(419) 535-1976
Counsel for Respondents

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-0647

QUESTION PRESENTED

Was Respondent Leu's removal of appointed employees of the Respondent Union, who serve at the will of the president of the Respondent Union, lawful under the Labor-Management Reporting and Disclosure Act of 1959?

TABLE OF CONTENTS

QUESTION PRESENTED 1
TABLE OF AUTHORITIES III
STATEMENT OF THE CASE 1
SUMMARY OF THE ARGUMENT 5
ARGUMENT 7

I. THE DISCHARGE OF APPOINTED UNION BUSINESS AGENTS DUE TO THEIR SUPPORT OF AN OPPOSING CANDIDATE FOR THE PRESIDENCY OF A UNION, DOES NOT VIOLATE THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959 7

A. The Labor-Management Reporting and Disclosure Act Does Not Protect Appointed Employees in Their Capacities As Employees of the Union 8

B. The Public Interest in the Effective Functioning of Democratic Unions Requires That Elected Union Officials Be Free to Select Appointed Employees Who Will Effectively Carry Out Their Policies and Programs 13

II. ASSUMING ARGUENDO THAT THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT PROTECTS THE EMPLOYMENT INTERESTS OF APPOINTED EMPLOYEES OF A UNION, SUMMARY JUDGMENT WAS PROPERLY AWARDED TO RESPONDENTS IN THE INSTANT CASE 21

CONCLUSION 27

TABLE OF AUTHORITIES

Cases

Bradford v. Textile Workers of America Local 1093, 563 F.2d 1138, 96 L.R.R.M. 2690 (4th Cir., 1977) 16, 17
Branti v. Finkel, 445 U.S. 507 (1980) 6, 7, 25, 26
Calhoon v. Harvey, 379 U.S. 134 (1964) 21
Carey v. Donohue, 240 U.S. 430 (1916) 11
Cehaich v. International Union, UAW, 496 F. Supp. 912, 105 L.R.R.M. 3210 (E.D. Mich., 1980) 14, 15, 17
Collins v. International Brotherhood of Electrical Workers Local 1944, 418 F. Supp. 50, 92 L.R.R.M. 3566 (W.D. Pa., 1976) 10
Cooke v. Orange Belt District Council, 529 F.2d 815, 91 L.R.R.M. 2349 (9th Cir., 1976) 16
Elrod v. Burns, 427 U.S. 347 (1976) 6, 25, 26
Federal Trade Commission v. Sun Oil Co., 371 U.S. 505 (1963) 11
Gabauer v. Woodcock, 520 F.2d 1084, 89 L.R.R.M. 2961 (8th Cir., 1975), *cert. denied*, 423 U.S. 1061 (1976) 11-12, 16
Grand Lodge v. King, 335 F.2d 340, 56 L.R.R.M. 2639 (9th Cir., 1964), *cert. denied*, 379 U.S. 920 (1964) 12, 17, 18, 19
Huffman v. Pursue Ltd., 419 U.S. 892 (1974) 4
J. Ray McDermott Co., Inc. v. Vessel Manning Star, 457 F.2d 815 (5th Cir., 1972) 11
Lamb v. Miller, ... F.2d ....., 107 L.R.R.M. 3064 (D.C. Cir., 1981) 16
Maceira v. Pagan, 649 F.2d 8, 107 L.R.R.M. 2408 (1st Cir., 1981) 16

Martire v. Laborers Local Union 1058, 410 F.2d 32, 70 L.R.R.M. 3378 (3d Cir., 1969), *cert. denied*, 396 U.S. 903 (1969) 10

Miller v. Holden, 535 F.2d 912, 95 L.R.R.M. 2152 (5th Cir., 1976) 15

Miller v. Holden, 95 L.R.R.M. 2156 (M.D. La., 1977) 15

Mount Healthy City School District Board of Education v. Doyle, 429 U.S. 274 (1977) 6, 22, 23

Newman v. Local 1101, Communication Workers of America, 570 F.2d 439, 97 L.R.R.M. 2606 (2d Cir., 1978) 20

Retail Clerks Union, Local 648 v. Retail Clerks International Association, 299 F. Supp. 1012, 70 L.R.R.M. 3366 (D.C. D.C., 1969) 17-18, 19

Schonfeld v. Penza, 477 F.2d 899, 83 L.R.R.M. 2020 (2d Cir., 1973) 10

Sewell v. Grand Lodge IAM, 445 F.2d 545, 77 L.R.R.M. 2916 (5th Cir., 1971) 14-15, 20

Sheridan v. Carpenters Local 626, 301 F.2d 152, 50 L.R.R.M. 2637 (3d Cir., 1962) 10

Wambles v. International Brotherhood of Teamsters, 488 F.2d 888, 85 L.R.R.M. 2328 (5th Cir., 1974) 14, 15, 20

Wirtz v. Hotel Employees Union, Local 6, 391 U.S. 492 (1968) 13

Witte v. Myers, 343 F. Supp. 873, 81 L.R.R.M. 2340 (W.D. Mich., 1971) 17

Wood v. Dennis, 489 F.2d 849, 84 L.R.R.M. 2662 (7th Cir., 1972), *cert. denied*, 415 U.S. 960 (1974) 12, 16, 17

Statutes

Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 522 (1959)—

29 U.S.C. Section 401, et seq. (1975) 8
29 U.S.C. Section 411(a)(1) (1975) 4, 7, 8
29 U.S.C. Section 411(a)(2) (1975) 4, 7, 8, 24
29 U.S.C. Section 411(a)(5) (1975) 11, 12
29 U.S.C. Section 412 (1975) 8, 15
29 U.S.C. Section 481 (1975) 10, 17
29 U.S.C. Section 529 (1975) 4, 8, 9, 12

Other Authorities

Legislative History of the Labor-Management Reporting and Disclosure Act of 1959 (NLRB, 1959) 7, 10 11, 13

Rothman, *Legislative History of the "Bill of Rights" for Union Members*, 45 MINN. L. REV. 199 (1960) 11

No. 80-2150

In the Supreme Court of the United States

October Term, 1980

DONALD FINNEGAN, *et al.*,
Petitioners,

VS.

HAROLD D. LEU, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENTS

STATEMENT OF THE CASE

The action before this Honorable Court arises out of respondent Harold D. Leu's discharge of fifteen (15) appointed business agents for respondent International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union 20 (hereinafter referred to as Union, JA at 3-7).[1] Respondent Union is a labor organization which represents workers in a fourteen (14) county area of northwestern Ohio (R. at 60). In December, 1977, an election for the presidency and other officers of the

---

1. "JA" refers to the Joint Appendix. "R" refers to page references of the Appendix filed in the United States Court of Appeals for the Sixth Circuit.

Union pitted the slate of Harold D. Leu against the slate of incumbent Omar L. Brown (JA at 9). It is undisputed that that election was hotly contested, and that campaigning was vigorous for both slates (JA at 9). Respondent Leu was declared to be the victor in that election.

During the 1977 campaign which resulted in respondent Leu's election to the presidency of the Union, respondent Leu campaigned vigorously upon the issue of better representation for the rank-and-file membership of the Union. In fact, the primary issue in respondent Leu's campaign, and his primary campaign promise to the members of the Union, was that, if elected, he would improve the service and representation to the rank-and-file membership over that which had been provided under the previous Brown administration (JA at 14 and 23-25).

Such representation and service to the membership is the primary responsibility of appointed employees of the Union, known as business agents, who are to carry out that task pursuant to the policies and guidelines dictated by the president of the Union (JA at 12-13, Joint Exhibit 1 at 16 and R. at 71). The Bylaws of the Union, which were adopted by, and may be amended by a vote of the membership of the Union, provide that the president of the Union shall have authority to appoint, suspend, and hire business agents for the Union (Joint Exhibit 1 at 15, R. at 71). The Bylaws further provide that business agents shall be subject to all orders and directives of the president of the Union (Joint Exhibit 1 at 16, R. at 71). Thus, the membership of the Union through its enactment of the Union's Bylaws, has given the president complete authority over the employment of the Union's business agents.

Prior to taking office on December 30, 1977, respondent Leu determined that in order to carry out his campaign commitment to improve representation and service to the

rank-and-file membership of the Union, it would be necessary to replace many of the appointed business agents employed under the previous Brown administration (JA at 24). Respondent Leu based this determination upon his observations of the petitioners (Brown business agents and other business agents not parties to this action) in performing their duties for the incumbent Brown administration (JA at 24 and 27).

As a result of this determination, on January 3, 1978, respondent Leu informed the fifteen (15) appointed business agents that he was terminating their employment with the Union (JA at 11). At that time, Leu informed the business agents that he was terminating their employment with the Union based upon his belief that they were unable to fulfill his campaign commitments to the membership (JA at 24-25). Respondent Leu informed the business agents that he did not believe, based upon their performance under the previous Brown administration, that they could adequately represent and service the membership of the Union in the manner in which he believed that that task should be performed (JA at 22-23 and 24).

Respondent Leu did not at that time, or at any other time, expel or suspend or attempt to expel or suspend the business agents from their membership in the Union or interfere in any way with their exercise of their rights as Union members (JA at 14, 18, 20-21, 36-38, 41, 47-48).[2]

---

2. Petitioners in their brief filed in this Court state that respondent Leu allegedly embarked upon a scheme to prevent petitioners from obtaining employment within the jurisdiction of the Union, and thereby, allegedly denied them their membership rights and caused them financial hardship (Brief of petitioners at 7-8). It must be noted however, that petitioners' complaint filed in the District Court made no allegations of such a nature, but rather alleged only that their rights under the Labor-Management Reporting and Disclosure Act of 1959 had been abridged by virtue

(Continued on following page)

Additionally, it should be noted that although respondent Leu discharged the fifteen (15) business agents who originally instituted this action, he did retain as business agents two (2) individuals who had served in that capacity under the Brown administration and who had supported incumbent Brown in his campaign (JA at 14-15).

Shortly after their discharges from their positions as appointed business agents of the Union, petitioners filed their complaint in the United States District Court for the Northern District of Ohio, Western Division, alleging that they had been discharged in violation of their rights under Sections 411(a)(1), 411(a)(2), and 529 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. Sections 411 and 529. Petitioners sought injunctive and monetary relief in the District Court (JA at 7). After a hearing upon petitioners' motion for a preliminary injunction, the District Court denied that motion (JA at 1).

The District Court, subsequently, upon respondent Leu and respondent Unions' motions for summary judgment, determined that while the Labor-Management Reporting and Disclosure Act protected petitioners' rights as members of the Union, it did not guarantee them continued employment as employees of the Union (Petition for Writ of Certiorari at A4-A9). The District Court therefore sustained the motion for summary judgment of respondents. The U.S. Court of Appeals for the Sixth Circuit affirmed

---

Footnote continued—

of their discharge from their positions as appointed business agents (JA at 3-7). Petitioners at no time sought leave to amend that complaint in the District Court. Similarly, the question on which this Court granted certiorari is limited to the question of whether petitioners' rights under the Labor-Management Reporting and Disclosure Act have been violated by virtue of their discharge as business agents. (*See*, Petition for Writ of Certiorari). Thus, these matters are not properly before this Court, and this portion of petitioners' brief should be disregarded and stricken by the Court. *See, Huffman v. Pursue Ltd.*, 419 U.S. 892 (1974).

the decision of the District Court adopting its reasoning in regard to petitioners' rights of employment as Union employees versus their rights as members of the Union (Petition for Writ of Certiorari at A1-A3). This Honorable Court granted certiorari to determine the issues presented in this case.

SUMMARY OF THE ARGUMENT

The Labor-Management Reporting and Disclosure Act does not protect appointed employees of a labor organization from removal from employment with a union. The provisions of the Act are only applicable to membership rights. Thus, an appointed employee may lawfully be removed from his employment so long as he is not also disciplined in a manner that affects his rights as a member of the union. The provisions of the Act make reference only to the protection of membership rights, and are therefore inapplicable to employment rights. This conclusion is buttressed by the legislative history of the Act which indicates that Congress intended to exclude officers in their capacity as officers from the protections of the Act.

This interpretation of the Labor-Management Reporting and Disclosure Act also comports with the purposes of its enactment by Congress. In enacting the Act, Congress expressed a public interest in the protection of the democratic processes within labor unions. The removal of appointed officers of a union as a result of their expressed political opposition to the elected president of the union furthers the democratic functioning of the union.

In electing an individual as president of the union, the majority of the membership of the union has expressed its approval of that individual's policies and goals for the

union. The membership is therefore entitled to expect that the appointees of that president will carry out the policies which they have endorsed through their vote. Should the membership disagree with the president's actions in regard to the removal of appointees, they may express that dissatisfaction through the electoral process. Thus, the removal of appointees politically opposed to the policies of an elected union president fosters the purposes of the Labor-Management Reporting and Disclosure Act.

Even assuming arguendo that the Act is applicable to appointed agents of a union in their capacity as employees of the union, respondents were properly awarded summary judgment in this case. The petitioners were employees of the union who served at the pleasure of the president and could therefore, be discharged without any reason whatever. Their positions were therefore similar to that of the non-tenured teacher in *Mount Healthy City School District Board of Education v. Doyle*, 429 U.S. 274 (1977). Assuming there is a cause of action for the removal of an appointed employee of a union, the standard set by this Court in that case should be applied here. That is, if respondent can demonstrate that petitioners would have been discharged despite their political activities, petitioners have no right to reinstatement. The record in the instant case demonstrates that such is the case.

The standard urged by amici based upon this Court's decisions in *Elrod v. Burns*, 427 U.S. 347 (1976) and *Branti v. Finkel*, 445 U.S. 518 (1980) would place unions in the position of being unable to discharge employees, even for entirely legitimate reasons, so long as those employees engage in political activities in opposition to the union administration if their jobs are such that political loyalty is not a necessary prerequisite to the performance of their jobs. This standard should therefore be rejected by the Court.

However, even under the application of the *Branti* standard, respondents were properly awarded summary judgment in this case since petitioners as business agents for the union were of primary importance in implementing the policies of the president of the union. The decision of the United States Court of Appeals for the Sixth Circuit should therefore be affirmed.

ARGUMENT

I. THE DISCHARGE OF APPOINTED UNION BUSINESS AGENTS DUE TO THEIR SUPPORT OF AN OPPOSING CANDIDATE FOR THE PRESIDENCY OF A UNION, DOES NOT VIOLATE THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959.

The Congressional purpose in the enactment of the Labor-Management Reporting and Disclosure Act of 1959, was to remedy what Senate hearings revealed to be abuses of power by some union officials which prevented the functioning of those unions in a democratic manner. *See*, 2 Legislative History of the Labor-Management Reporting and Disclosure Act of 1959 (NLRB, 1959) (hereinafter cited as Legislative History) at 1096-1199. In order to insure the democratic functioning of unions, Congress, through the enactment of Title I of the Act, entitled, "Bill of Rights of Members of Labor Organizations", sought to guarantee to the rank-and-file members of unions certain rights to freedom of speech, association, and equal rights to participate in the elections and meetings of their unions, 29 U.S.C. Section 411(a)(1) and 411 (a)(2). Congress further provided a means for redress of violations of these rights by granting union members access to the federal courts in order to rectify any fine,

suspensions, expulsion, or other discipline of members in violation of the exercise of their rights guaranteed by the Bill of Rights, 29 U.S.C. Section 412 and Section 529.

The instant case however, does not involve allegations that the rights of union members as members of the union have been infringed upon (JA at 3-7). Rather, this action involves solely a question as to whether appointed union employees may be removed from their employment due to their expressed opposition to a rival candidate and newly elected president of the union. It must be stressed at the outset that petitioners' complaint in the District Court, and the question presented to this Court, present exclusively this question, and do not present any question concerning any deprivation of the membership rights of the petitioners. Two separate theories support the conclusion of the courts below in the instant case.

A. The Labor-Management Reporting and Disclosure Act Does Not Protect Appointed Employees in Their Capacities As Employees of the Union.

Title I of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. Section 401, et seq. provides for certain safeguards of the rights of rank-and-file union members. 29 U.S.C. Sections 411(a)(1) and 411(a)(2) provide that:

> (a)(1) Equal rights. Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

> (2) Freedom of speech and assembly. Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided*, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

Section 529 of the Act similarly provides that:

> It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this chapter. The provisions of section 412 of this title shall be applicable to the enforcement of this section.

In initially examining the above quoted provisions, it should be noted that they refer exclusively to the rights and remedies of members of a union. Thus, on their face, the provisions of the Labor-Management Reporting and Disclosure Act protect only *membership* rights. While employee members of a union possess the full panoply of rights enunciated in the Act in their capacities as members of the union, on the face of the Act, these rights do not apply to union officials and employees in

their capacities as union employees. *Martire v. Laborers Local Union 1058*, 410 F.2d 32, 70 L.R.R.M. 3378 (3d Cir., 1969), *cert. denied*, 396 U.S. 903 (1969); *Sheridan v. Carpenters Local 626*, 306 F.2d 152, 50 L.R.R.M. 2637 (3d Cir., 1962); *Collins v. International Brotherhood of Electrical Workers Local 1944*, 418 F. Supp. 50, 92 L.R.R.M. 3566 (W.D. Pa., 1976); *Schonfeld v. Penza*, 477 F.2d 899, 83 L.R.R.M. 2020 (2d Cir., 1973) at 83 L.R.R.M. 2023.

This conclusion is buttressed by the available legislative history of the Bill of Rights provisions. Senator McClellan in introducing the amendment to the Labor-Management Reporting and Disclosure Act, which ultimately evolved into the Bill of Rights provision in its present form, consistently stressed the need to protect the rights of rank and file members of unions to criticize and question the officers of their unions. *See*, 2 Legislative History at 1098-1105. Similarly, debate in the Senate of the subsequent Kuchel amendment, which altered the original McClellan proposition, stressed the Senate's interest in protecting the rights of rank and file members. 2 Legislative History, at 1233.

No mention is made of the protection of rights of appointed officials of the union in their continued employment with the union. While amici contend that this omission of all reference to officers indicates that Congress did not intend to exclude them from the protections of the Act in their capacities as officers, a more valid inference is that Congress by its failure to mention officers did not intend to include protection of their status as officers within the Bill of Rights provisions of Title I. Within the provisions of the Act, where Congress intended to make the provisions of the Act applicable to officers of the union, it specifically so stated. *See e.g.*, 29 U.S.C. Section 481. It must therefore be presumed that in other provisions of the Act, the

lack of specific reference to officers indicated an intent on the part of Congress to exclude them from the coverage of those provisions. *Federal Trade Commission v. Sun Oil Co.*, 371 U.S. 505 (1963) at 514-515; *J. Ray McDermott Co., Inc. v. Vessel Manning Star*, 457 F.2d 815 (5th Cir., 1972) at 818.

Additionally, it must be noted that an early version of the "Bill of Rights of Union Members" specifically referred to the protection of the rights of both members and employees of labor organizations. Rothman, *Legislative History of the "Bill of Rights" for Union Members*, 45 MINN. L. REV. 199 (1960) at 204. Congress later saw fit to exclude this reference to employees in the final form of the statute. Respondent would submit that again, this indicates an intention on the part of the Congress to exclude protection of appointed employees in the retention of their union employment from the provisions of Title I of the Act. *Carey v. Donohue*, 240 U.S. 430 (1916).

Further, the conference report on the Labor-Management Reporting and Disclosure Act of 1959 states in pertinent part that:

> In paragraph (5), relating to safeguards against improper disciplinary action, it should be noted that the prohibition on suspension without observing certain safeguards applies only to suspension of membership in the union; it does not refer to suspension of a member's status as an officer in the union.

1 Legislative History, at 935. Thus, Congress excluded the removal of officers from the definition of "discipline" as the term is used in 29 U.S.C. Section 411(a)(5), and the courts in interpreting that section have uniformly so held. e.g., *Gabauer v. Woodcock*, 520 F.2d 1084, 89 L.R.R.M. 2961 (8th Cir. 1975), *cert. denied*, 423 U.S. 1061 (1976) at 89

L.R.R.M. 2967. Having excluded the removal of an officer from union office from the definition of "discipline" in Section 411(a)(5), it would seem evident that Congress intended the term "discipline" as used in Section 529 similarly to exclude the suspension or removal of appointed officers from their union offices from the prohibitions of that section. Although the Ninth Circuit Court of Appeals has rejected this contention based upon its conclusion that Congress intended the words of the two sections to have different meanings, *Grand Lodge v. King*, 335 F.2d 340, 56 L.R.R.M. 2639 (9th Cir., 1964), *cert. denied*, 379 U.S. 920 (1964) at 56 L.R.R.M. 2642, it is doubtful that Congress would have left such an intention to give identical language two entirely separate meanings totally unexpressed. *Wood v. Dennis*, 49 F.2d 849, 84 L.R.R.M. 2662 (7th Cir., 1972), *cert. denied*, 415 U.S. 960 (1974) at 84 L.R.R.M. 2668 (concurring opinion of Judge Stevens).

The term discipline as used in Section 529 refers only to discipline in interferring with membership rights. In this case petitioners have clearly not been disciplined in their capacities as members of the union and the Bill of Rights provisions are therefore inapplicable here (JA at 14, 18, 20-21, 36-38, 41 and 47-48). While petitioners had a right under the Labor-Management Reporting and Disclosure Act to campaign on behalf of the incumbent Brown slate in the 1977 election, and clearly could not be disciplined in their capacities as members of the union for such activity, the provisions of the Act did not offer them protection in their continued employment as appointed employees of the union as a result of that activity. While the legislative history of the Bill of Rights provisions of the Act is sparse, as is demonstrated above, time and time again the legislative history points toward a congressional intent to exclude coverage of the Act's pro-

tections to employees of unions in their capacities as employees of the union.

B. The Public Interest in the Effective Functioning of Democratic Unions Requires That Elected Union Officials Be Free to Select Appointed Employees Who Will Effectively Carry Out Their Policies and Programs.

As noted above, in the passage of the Labor-Management Reporting and Disclosure Act of 1959, Congress expressed an interest in furthering and preserving the democratic nature of unions in the United States. *See*, 2 Legislative History at 1096-1099. The Act, however, makes no specific reference to the rights of employees of the union in the retention of their employment, but rather, refers only to the membership rights of union members. As a result, a determination of the issue presented to the Court in the instant case must be analyzed in terms of the effect of the discharge of appointed union employees by the elected president of the union upon the purposes of the Act to advance the democratic administration of labor unions. *Wirtz v. Hotel Employees Union, Local 6*, 391 U.S. 492 (1968) at 499.

Respondent would submit that rather than contravening the purposes of the Act, the discharge of appointed business agents, who have expressed their opposition to the elected administration of the union, advances the democratic goals of the Act. The administration of respondent Union is governed by the Bylaws of the Union which are enacted by, and may be amended by, the rank-and-file membership through a referendum (Joint Exhibit 1 at 60-62, R. at 71). Those Bylaws provide that the president of the Union shall be elected by the general membership

of the Union (Joint Exhibit 1 at 14 and 33, R. at 71). Additionally, pursuant to the Bylaws of the Union, the president is authorized to appoint, suspend, discharge and direct business agents (Joint Exhibit 1 at 15-16 and R. at 71).

Thus, the membership of the Union has chosen a form of government for itself which permits the rank-and-file membership to select for its president a candidate with whose policies and plans they agree. In turn, the president is permitted by the Bylaws to appoint individuals to carry out his policies and plans who support those policies pursuant to the mandate of the majority vote of the rank-and-file membership. In this way, rather than stifling the democratic process, the democratic process is advanced by insuring to the membership that their elected officers are able to carry out the mandate which they have been given pursuant to the electoral process.

> An appointed union officer, selected by and subject to dismissal by an elected one, may be presumed to contravene the will of the membership when he contravenes the policies of its elected officers. . . . (S)izable minorities may disagree with these policies but the remedy for this disagreement is available through the electoral processes. Furthermore, the policies of the Act in favor of union democracy are actually *advanced* by permitting elected officers to freely select and remove their appointees, since such selection and removal is the only means of implementation of the majority will and policy.

Cehaich v. International Union, UAW, 496 F. Supp. 912, 105 L.R.R.M. 3210 (E.D. Mich., 1980) at 105 L.R.R.M. 3213; *See also, Wambles v. International Brotherhood of Teamsters*, 488 F.2d 888, 85 L.R.R.M. 2328 (5th Cir., 1974) at 85 L.R.R.M. 2329; *Sewell v. Grand Lodge, IAM*, 445 F.2d 545,

77 L.R.R.M. 2916 (5th Cir., 1971).[3] Should the membership become dissatisfied with the decisions of their elected president in this regard, they may again exercise their rights to either elect a different president, or amend their Bylaws in order to provide another method for the selection of business agents. *Cehaich v. International Union, UAW, supra,* at 105 L.R.R.M. 3215. Thus, an interpretation of the Act which permits the elected president of the union to terminate the employment of appointed employees who oppose his policies, in fact, furthers the intent of Congress to insure the vitality of the democratic process within labor organizations.

It should be noted that in the instant case respondent Leu campaigned vigorously upon the issue for better representation of the membership which, under the previous Brown administration, was the primary responsibility of petitioners as appointed business agents (JA at 12, 13, 14 and 23-25). Respondent Leu was elected on this platform, and thus was given a mandate by the membership to do that which he felt was necessary to improve the representation of the membership. In respondent Leu's opinion this necessitated the removal of petitioners from their employment. Thus, in the circumstances presented by

---

3. Petitioners contend that the United States Court of Appeals for the 5th Circuit limited its holding in *Wambles* in its subsequent decision in *Miller v. Holden*, 535 F.2d 912, 95 L.R.R.M. 2152 (5th Cir., 1976). A close reading of the latter case, however, indicates otherwise. In *Miller*, the district court dismissed the plaintiff's complaint upon the basis of lack of jurisdiction over the subject matter. *Miller v. Holden*, at 95 L.R.R.M. 2153. The court of appeals determined that while its decisions in *Wambles v. International Brotherhood of Teamsters* and *Sewell v. Machinists* might well be controlling upon the merits of the case, the district court clearly had jurisdiction over a claim by a union employee for an alleged violation of his *membership* rights pursuant to 29 U.S.C. Section 412. *Miller v. Holden*, at 95 L.R.R.M. 2155-2156. Ultimately, the district court upon remand granted summary judgment for the defendants in that case. *Miller v. Holden*, 95 L.R.R.M. 2156 (M.D. La., 1977).

the instant case, it is evident that the purposes of the Act to promote the democratic functioning of labor unions were furthered by permitting respondent Leu to remove the petitioners from their employment. In this manner, he was able to fulfill his campaign commitments which were endorsed by the majority of the membership of the Union.

Petitioners in support of their contention that the Labor-Management Reporting and Disclosure Act should be interpreted to preclude the discharge of appointed employees who actively oppose the president of the union, rely heavily upon the decisions of several Courts of Appeal which are clearly distinguishable from the instant case. *Bradford v. Textile Workers of America Local 1093*, 563 F.2d 1138, 96 L.R.R.M. 2690 (4th Cir., 1977); *Wood v. Dennis*, 489 F.2d 849, 84 L.R.R.M. 2662 (7th Cir., 1972), *cert. denied*, 415 US. 960 (1974); *Cooke v. Orange Belt District Council*, 529 F.2d 815, 91 L.R.R.M. 2349 (9th Cir., 1976); *Gabauer v. Woodcock*, 520 F.2d 1084, 89 L.R.R.M. 2961 (8th Cir., 1975), *cert. denied*, 423 U.S. 1061 (1976); *Lamb v. Miller*, ... F.2d ....., 107 L.R.R.M. 3064 (D.C. Cir., 1981); *Maceira v. Pagan*, 649 F.2d 8, 107 L.R.R.M. 2408 (1st Cir., 1981). In each of these cases the Court determined that the removal or transfer of a union officer due to his political opposition to other incumbent officers of the union violated the provisions of the Act. However, in each of these cases, an *elected* officer was unilaterally removed from his position by another elected officer as a result of his political activities.

Unlike the removal of appointed employees who oppose the policies of the elected union administration, which furthers the democratic purposes of the Labor-Management Reporting and Disclosure Act, the unilateral removal of officers duly elected by the membership frustrates the intent of the Act. Appointed employees can be expected to be supportive of the elective officials by whom they are ap-

pointed, as explained above. However, an elected officer, whether he agrees with other elected officers of the union or not, must be able to express the policies and views which prompted his election to office by the membership. If such an elected official may be unilaterally removed from office due to his opposition to other officers, democratic processes are rendered meaningless by virtue of the emasculation of the efficacy of the vote of the membership. Additionally, the officers' membership right in holding elected office is infringed upon. 29 U.S.C. Section 481. Elected officers are afforded protections by Section 481 in order to protect their membership right to hold elective office. Congress did not afford appointed business agents these protections.

Thus, when analyzed in terms of the purposes of the Act, a clear distinction arises between the discharge of an appointed versus elected union official. *See, Bradford v. Textile Workers of America, Local 1093,* 563 F.2d 1138, 96 L.R.R.M. 2690 (4th Cir., 1977); *Wood v. Dennis,* 489 F.2d 849, 84 L.R.R.M. 2662 (7th Cir., 1972) at 84 L.R.R.M. 2668 (concurring opinion); *Cehaich v. International Union, UAW,* 496 F. Supp. 912, 105 L.R.R.M. 3210 (E.D. Mich., 1980); *Witte v. Myers,* 343 F. Supp. 873, 81 L.R.R.M. 2340 (W.D. Mich., 1971). This line of authority therefore lends little support to petitioners' contention that the discharge of appointed union business agents due to their political opposition to the policies of elected officers offends the democratic principles espoused by Congress in enacting the Act.

The rationale of the courts in the only decisions cited by petitioners which involved the discharge of appointed union officers, *Grand Lodge v. King,* 335 F.2d 340, 56 L.R.R.M. 2639 (9th Cir., 1964), *cert. denied,* 379 U.S. 920 (1964) and *Retail Clerks Union, Local 648 v. Retail Clerks International Association,* 299 F. Supp. 1012, 70 L.R.R.M.

3366 (D.C. D.C., 1969), should not be adopted by this Court. In each of these cases, the Court gave no consideration whatever to the democratic principles which are advanced by permitting elected officials to select appointees who are supportive of their policies. These cases rather, rely solely upon the presumed detrimental effect upon union democracy which allegedly results from the discharge of appointed employees who actively opposed the policies of the elected administration. *Grand Lodge v. King, supra* at 56 L.R.R.M. 2641; *Retail Clerks Union, Local 648 v. Retail Clerks International Association, supra* at 70 L.R.R.M. 3371.

Such a deleterious effect should not be presumed. Whether the rank-and-file membership of the union will live in fear of exercising their rights under Section 411 due to the discharge of an appointed union employee is at best highly speculative. There is no indication in either of these cases that in fact such a result occurred. Thus, the only clear effect of the discharge of an appointed union employee is to prevent appointed employees who oppose the policies of the elected officers from voicing their opposition while they remain on the union payroll. Clearly their opposition will not be stifled by virtue of their right to continue to voice their opinions as members of the union. This effect of such discharges must be balanced against the benefits to the furtherance of democratic goals when elected officers are permitted to hire appointees who will support those officers' policies for the union pursuant to the mandate of the electorate. Respondent would submit that the benefits far outweigh any detrimental effects of such discharges, and the rationale of these cases must therefore be rejected.

Additionally, in neither *Grand Lodge* nor *Retail Clerks* did the Court examine the Bylaws of the union involved in

order to determine whether the membership of the union had granted its president authority to remove appointed employees. Here, the membership of the respondent Union has determined that its president should be given this authority in order that he may implement the policies to which they have given their approval. This consideration was not addressed in *Grand Lodge* or *Retail Clerks*. Thus, the cases are further distinguishable from the instant case on that basis.

Amici in turn contend that elected officials of a union must not be permitted to remove appointed employees who oppose their policies and programs for the reason that these employees are allegedly the only source from which effective opposition may emanate due to the lack of a permanent opposition party in most unions. Amici contend that the continued employment of these employees is for this reason necessary to further the democratic intentions of the Bill of Rights provisions of the Act (Brief of Amici Curiae at 7-13). This contention flies in the face of the facts of the instant case. An effective opposition party has existed within the respondent Union at all times since 1974 (JA at 8-9). In fact, respondent Leu in this case successfully opposed the incumbent Brown administration in the 1977 election which ultimately gave rise to this litigation (JA at 9). This argument by amici further ignores the fact that the membership of the Union has authorized the president to discharge appointed business agents pursuant to the Bylaws. Thus, this contention seeks to have this Court determine this case upon a broad contention that is not applicable to the facts of this case.

Additionally, the contention of the amici ignores the reality of union politics and administration. The issue presented in this case cannot be analyzed in a hypothetical vacuum. The petitioners in this case made it eminently clear through both their vigorous campaign activities for

the Brown slate, and through their actions in carrying out their job duties under the Brown administration, that they were diametrically opposed to both the plans and policies of respondent Leu for the Union (JA at 23-24).[4]

To hold that respondents were required to continue the employment of petitioners as appointed business agents under the new Union administration until such time as they manifested some overt grounds for discharge, or until such time as they retired, would mean that petitioners could remain on the Union payroll indefinitely while undermining the Union administration so as to render it ineffective and thus insure the election of their own candidate in the next election. Such a result, which would undermine the effective administration of the union for the benefit of its members, cannot be tolerated in the name of union democracy. *See, Wambles v. International Brotherhood of Teamsters,* 488 F.2d 888, 85 L.R.R.M. 23, 28 (5th Cir., 1974); *Newman v. Local 1101, Communication Workers of America,* 570 F.2d 439, 97 L.R.R.M. 2606 (2d Cir., 1978); *Sewell v. Grand Lodge IAM,* 445 F.2d 545, 77 L.R.R.M. 2916 (5th Cir., 1971). Appointed union employees in this manner would be granted far greater protections in both the exercise of their political rights under the Act and in their employment than was ever contemplated by Congress in enacting the Bill of Rights provisions. *Wambles v. Teamsters,* at 85 L.R.R.M. 2330.

The political realities of the administration of unions and the functioning of labor organizations so as to further the democratic purposes of the Labor-Management Reporting and Disclosure Act demand that elected union officers be permitted to remove appointed employees of the union

---

4. Although petitioners claimed that they "pledged support" to the new president of the union this alleged pledge of support was never communicated to respondent Leu, and petitioners continued opposition to the Leu presidency is apparent (JA at 11, 22-23, 48-49).

who advocate policies in contravention to the policies of the elected officers which have received the mandate of the rank-and-file membership. This Court has recognized "the general congressional policy to allow unions great latitude in resolving their own internal controversies". *Calhoon v. Harvey*, 379 U.S. 134 (1964) at 140. That general congressional policy is best advanced by permitting the rank-and-file membership of a union to determine whether or not it agrees with the decisions of its elected leaders in this regard through the democratic electorial process. The democratic purposes of the Act are not served by thrusting upon the membership appointed employees who do not represent their interests as demonstrated by the vote of the majority.

II. ASSUMING ARGUENDO THAT THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT PROTECTS THE EMPLOYMENT INTERESTS OF APPOINTED EMPLOYEES OF A UNION, SUMMARY JUDGMENT WAS PROPERLY AWARDED TO RESPONDENTS IN THE INSTANT CASE.

Assuming arguendo that the provisions of the Act do provide protection to appointed business agents so as to prevent their removal from appointed union employment due to their support of policies which contravene those of the elected administration, respondent would submit that the decision of the U.S. Court of Appeals for the Sixth Circuit must still be affirmed in this case.[5] As previously

---

5. Amici have put before this Court an elaborate scheme which they contend should be utilized in determining whether the discharge of an appointed union employee violates Title I of the Labor-Management Reporting and Disclosure Act (Brief of Amici Curiae at 13-19). Respondents therefore find it necessary to present this argument in the event that the Court should find it necessary to reach this question.

noted, business agents within respondent Union are appointed by the president of the Union, and serve at the pleasure of the president (Joint Exhibit 1 at 15 and R at 71). The appointed business agents of the Union therefore, may be discharged for any or no reason. Assuming arguendo that the Act protects employment rights, it is only when the grounds for their discharge run afoul of the provisions of the Act that appointed officers may be provided with some protection against the termination of their employment.

This situation is analogous to the situation before this Court in *Mount Healthy City School District Board of Education v. Doyle*, 429 U.S. 274 (1977). That case involved a claim by a non-tenured teacher that his teaching contract with the Board of Education had not been renewed due his exercise of his First Amendment rights to freedom of expression. Doyle having not attained tenured status, his contract could have been non-renewed by the Board of Education for no reason whatever. *Mount Healthy v. Doyle*, at 283. The Court however, determined that if it could be demonstrated that the reason for the Board of Education's decision to not reemploy Doyle turned upon the exercise of his First Amendment rights, Doyle should be reinstated to his employment. *Mount Healthy v. Doyle*, at 283.

In determining the burden of proof necessary to establish a right to reinstatement, the Court stated that:

> A rule of causation which focuses solely on whether protected conduct played a part, 'substantial' or otherwise, in a decision not to rehire, could place an employee in a better position as a result of the exercise of constitutionally protected conduct than he would have occupied had he done nothing.

Mount Healthy v. Doyle, at 285. The Court placed the burden of proof upon plaintiff to demonstrate that constitutionally protected conduct played a substantial role in the decision not to reemploy him, which showing could be rebutted by a demonstration that the employer would have reached the same result regardless of the exercise of any constitutionally protected rights. *Mount Healthy v. Doyle,* at 287.

In the event the Court should determine that petitioners' employment with the Union is protected by the Act, and respondents again urge that it is not, the *Mount Healthy* standard is one which may be controlling in the instant case. Petitioners having no right to continued employment as business agents, they, like the teacher in *Mount Healthy,* are subject to discharge without reason. Thus, they should not be placed in a position whereby they can insure their indefinite employment by engaging in political activity when no such right to continued employment would otherwise exist.

In applying this standard to the facts of the instant case, it is clear that the courts below properly awarded summary judgment for respondents. Respondent Leu in his campaign for the presidency of the Union, campaigned vigorously upon the issue of better representation for the membership of the Union (JA at 14 and 23-25). Prior to his election as president, Leu observed the activities of petitioners, and found their job performance in this area to be inadequate (JA at 24 and 27). This observation accounted for his decision to discharge petitioners from their employment (JA at 22-23 and 24). Thus, petitioners' employment with the union would have been terminated regardless of their political activities on behalf of the incumbent slate. Summary judgment was thus properly awarded to respondents in this case.

Amici spend a large portion of their brief proposing a standard for the discharge of appointed employees who engage in political expression pursuant to the proviso of Section 411(a)(2) (Brief of Amici Curiae at 13-19). It must first be noted that the proviso to Section 411(a)(2), which provides that unions may adopt and enforce rules as to the responsibility of members to refrain from conduct which would interfere with the union's legal and contractual obligations, is entirely inapplicable to the instant case. The instant action presents a question in regard to whether appointed employees may be lawfully removed from employment. At no time in the courts below did either the petitioners or respondents contend that petitioners were discharged pursuant to any rule of respondent Union promulgated pursuant to the proviso of Section 411(a)(2). Rather, on the facts presented by this action, the issue before this Court is whether the Act protects appointed employees of a union in their capacities as employees of the union. Amici, through this argument, attempt to interject an issue into this case not presented in the courts below, and therefore not properly before this Court. Since the facts of this case do not present any issue concerning the application of the proviso to Section 411(a)(2), any decision giving meaning to the proviso would be advisory in nature. Thus, the test proposed by amici is not relevant in the instant case, and should be rejected by the Court.[6]

Likewise, amici urge that this Court adopt a test for determining the propriety of the discharge of appointed union employees pursuant to which unions would be required to demonstrate that political loyalty to the policies of the

---

6. Since the standard proposed by amici is entirely irrelevant to this action, respondents have chosen not to address that proposed standard in its entirety.

elected union administration is a necessary prerequisite to the fulfillment of the responsibilities of the particular job in question (Brief of Amici Curiae at 17-19). This standard would, however, permit union employees in many cases, to effectively insure themselves of lifetime employment by engaging in political activities in opposition to the union administration. This would place unions in the untenable position of being virtually unable to replace employees whose jobs do not require political loyalty for any reason, whether legitimate or not, so long as those employees engage in political activities. This standard should therefore be rejected by the Court.

Respondents would submit however, that even under this standard, respondents were properly awarded summary judgment in this case. Amici rely upon the cases of *Elrod v. Burns*, 427 U.S. 347 (1976) and *Branti v. Finkel*, 445 U.S. 507 (1980) in support of their argument for the applicability of the standard set forth above in the instant case. These cases however, are clearly distinguishable from the instant one. The Court in both *Elrod* and *Branti* specifically determined that the job duties of the employees involved in no way encompassed duties which indicated that political support for the incumbent officeholder was necessary to the performance of those duties. *Elrod v. Burns*, at 351; *Branti v. Finkel*, at 519. As illustrative of a situation in which party affiliation might be a necessary prerequisite to the maintenance of public employment, the *Branti* Court observed that:

> (T)he Governor of a State may appropriately believe that the official duties of various assistants who help him write speeches, explain his views to the press, or communicate with the legislature cannot be performed effectively unless those persons share his political beliefs and party commitments. In sum, the ultimate inquiry is not whether the label 'policymaker' or 'con-

> fidential' fits a particular position; rather, the question is whether the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved.

Branti v. Finkel, 445 U.S. 507 (1980) at 518.

Additionally, both *Elrod* and *Branti* involved the removal of public employees from their employment for the sole reason that their political affiliations were different from those of the newly elected incumbent under whom they worked. In neither case had the employees involved expressed an unwillingness to carry out the policies of their superiors. *Elrod v. Burns*, at 351; *Branti v. Finkel*, at 510. In the instant case however, the petitioners have clearly expressed their opposition to the presidency and policies of respondent Leu (JA at 11, 22-23, and 48-49).

Assuming arguendo that this standard should be applied to the instant case, it is clear that petitioners are employees of whom party affiliation or support could be required. Although appointed business agents of the respondent union do not participate in the making of policy for the union, they have primary responsibility for the effectuation of the policies and programs of the president of the union (JA at 12-13). They, like the hypothetical assistant to the governor of a state in *Branti*, must necessarily support the policies and programs of the president of the union in order to adequately and fully perform their jobs. Thus, under the standard urged by the amici, respondents were properly granted summary judgment in this case.

Thus, even assuming arguendo that petitioners could not lawfully have been removed from their employment as appointed business agents for the respondent union by virtue of their political activities, their removal was lawful in the circumstances of the instant case.

CONCLUSION

For all the foregoing reasons, the decision of the United States Court of Appeals for the Sixth Circuit should be affirmed.

Respectfully submitted,

JACK GALLON
TED IORIO
Counsel of Record
JEFFREY JULIUS
TOBIE BRAVERMAN
GALLON, KALNIZ & IORIO Co., L.P.A.
3161 N. Republic Boulevard
Toledo, Ohio 43615
(419) 535-1976
Counsel for Respondents

Office - Supreme Court, U.S.
FILED
FEB 16 1982
ALEXANDER L. STEVAS,
CLERK

No. 80-2150

In the Supreme Court of the United States

October Term, 1981

DONALD FINNEGAN, *et al.*,
Petitioners,

vs.

HAROLD D. LEU, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITIONERS' REPLY BRIEF

SAMUEL G. BOLOTIN
(*Counsel of Record*)
BOLOTIN & BOLOTIN CO., L.P.A.
2nd Floor Gardner Building
506 Madison Avenue
Toledo, Ohio 43604
(419) 241-1900
Counsel for Petitioners

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-5647

TABLE OF CONTENTS

ARGUMENT 1

I. The Legislative and Judicial History Supports Petitioners' Position 1

II. Petitioners Are Not Requesting That a Civil Service Rule Be Adopted to Protect Appointed Officials 7

III. The Facts in This Case Demonstrate That Union Democracy Is Not Being Fostered by Permitting the Retaliatory Discharges of the Appointed Business Agents Because This Case Represents a Fact Situation Contrary to the Fact Situation Assumed by Respondent, Amicus Curiae AFL-CIO and Amicus Curiae National Labor Law Center 9

CONCLUSION 13

TABLE OF AUTHORITIES

Cases

Adickes v. S. H. Kress & Co., 398 U.S. 144 (1970) 13

Alvino v. Bakery Workers Union, 46 L.R.R.M. 2812 (D. D.C. 1960) 12

Bakery & Confectionary Workers International Union v. Ratner, 335 F.2d 691, 56 L.R.R.M. 2432 (D.C. Cir., 1964) 12

Branti v. Finkel, 445 U.S. 507 (1980) 13

Brown v. Board of Education, 347 U.S. 483 (1954) 6

DeCampli v. Greeley, 293 F. Supp. 746, 69 L.R.R.M. 2786 (D.N.J. 1968) 12

Fleming v. Nestor, 363 U.S. 603 (1960) 7
George v. Bricklayers Union, 255 F. Supp. 239, 62 L.R.R.M. 2478 (E.D. Wisc. 1966) 12
Grand Lodge v. King, 335 F.2d 340, 56 L.R.R.M. 2639 (9th Cir., 1959), *cert. denied*, 379 U.S. 920, 57 L.R.R.M. 2512 (1964) 4, 5, 12
In Re Griffiths, 413 U.S. 717 (1973) 6
Mallick v. IBEW, 644 F.2d 228 (3rd Cir., 1981) 6
Marshall v. Teamsters Local 20, 611 F.2d 645, 103 L.R.R.M. 2111 (6th Cir., 1979) 9
Mount Healthy City School District Board of Education v. Doyle, 429 U.S. 274 (1977) 13
New York Times v. Sullivan, 376 U.S. 254 (1964) 6
Perrin v. United States, 444 U.S. 37 3
Price v. United Mine Workers, 376 F. Supp. 1015, 86 L.R.R.M. 2577, *aff'd without opinion*, 515 F.2d 1018, 90 L.R.R.M. 2844 (D.C. Cir., 1975) 12
Retail Clerks Union, Local 648 v. Retail Clerks International Association, 299 F. Supp. 1012, 70 L.R.R.M. 3366 (D.D.C. 1969) 12
Salzhandler v. Caputo, 316 F.2d 445, 52 L.R.R.M. 2908, 2910, 2911 (2d Cir., 1963) 6
Semancik v. UMW, 466 F.2d 144 (3rd Cir., 1972) 6
Sewell v. Machinists, 445 F.2d 545 (5th Cir., 1971), *cert. denied*, 404 U.S. 1024 (1972) 7
Sugarman v. Dougall, 413 U.S. 634 (1974) 6
Turner v. Machinists Lodge 1894, 590 F.2d 409 (2nd Cir., 1978) 6
United States v. Diebold, Inc., 369 U.S. 654 (1962) 12-13
Wood v. Dennis, 489 F.2d 849, 84 L.R.R.M. 2662 (7th Cir., 1972), *cert. denied*, 415 U.S. 960, 85 L.R.R.M. 2530 (1974) 5

Statutes

§101(a)(2), 29 U.S.C.A., §411(a)(2) 1, 2, 3, 5, 7, 11
§101(a)(5), 29 U.S.C.A., §411(a)(5) 4
§609, 29 U.S.C.A., §529 ..... 1, 2, 3, 5, 11
42 U.S.C. §1981, Civil Rights Act of 1866 6
42 U.S.C. §1983, Civil Rights Act of 1866 6

Other Authorities

LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959 (NLRB, 1959) ..... *passim*
Rothman, *Legislative History of the "Bill of Rights" for Union Members*, 45 MINN. L. REV. 199 (1960) 3, 4
Gunther, Foreward: *In Search of an Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 HARV. L. REV. 1 (1972) 6

No. 80-2150

In the Supreme Court of the United States

October Term, 1981

DONALD FINNEGAN, *et al.*,
Petitioners,

VS.

HAROLD D. LEU, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITIONERS' REPLY BRIEF

ARGUMENT

I. THE LEGISLATIVE AND JUDICIAL HISTORY SUPPORTS PETITIONERS' POSITION

It is clear from reading the briefs of the Respondents, and the three *Amici* that no one agrees on the extent and meaning of the protections and safeguards afforded by §101(a)(2) and §609 of the LMRDA, 29 U.S.C. §411 (a)(2) and 29 U.S.C. §529 respectively. In particular each has pulled from the LEGISLATIVE HISTORY to arrive at the rule which they feel to be appropriate in this case and each has argued with confidence and assertiveness that its interpretation is correct. What is paradoxical is the

extent to which they disagree. Respondent argues that the Court should affirm based upon the appointed-elected distinction (pages 7-21 of its brief). *Amici Curiae* Association for Union Democracy argues in support of Petitioners that no distinction can be made between appointed and elected officials but qualifies it by stating that in certain circumstances valid restrictions on protected expression will be limited to top level appointees who must be trusted to act with a high degree of independence and discretion (page 18 of its brief). *Amicus Curiae* National Labor Law Center assumes a similar position but argues for affirmance by stating that the lower courts reached the correct result but on the basis of incorrect reasoning and similarly suggests that the responsibilities of the appointive union representatives must be analyzed and his involvement in policy-making weighed (page 4 of its brief). Finally, *Amicus Curiae* AFL-CIO asserts that the courts should reject any of the *broad swept* approaches set forth by Petitioners or Respondents and instead vigorously opposes Petitioners' position and elaborately urges the court to adopt a *broad swept* approach that removal from an appointed position after a union election is neither discipline within the meaning of §609 or infringement under §101(a)(2), in this "*particular context*" (pages 7-22 of its brief).

The AFL-CIO further states at page 5 of its brief that the words in the statute should be interpreted as

---

1. This is not the first time the AFL-CIO has vigorously opposed matters relating to the Bill of Rights of union members. The LEGISLATIVE HISTORY reflects that the AFL-CIO contended in 1959 that there was no need for a Bill of Rights. See Supplement to Testimony by Senator McClellan before the House Education and Labor Committee relative to labor's Bill of Rights, II LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT 1294 (2). The AFL-CIO was so opposed to the Bill of Rights that Senator Goldwater commented for the LEGISLATIVE HISTORY how inconsistent the position of the AFL-CIO was. II LEGISLATIVE HISTORY 1352-53.

"taking their ordinary, *contemporary*, common meanings (*Perrin v. United States*, 444 U.S. 37, 42 (Emphasis supplied))". While the AFL-CIO has emphasized the word contemporary, Petitioners feel it is equally important to emphasize the word "ordinary" and "common".

In referring to §101(a)(1) and (2) and in §609 it is important to note that the protections are directed to "every member" and encompass the right to express "any view". This is qualified only by the right of the labor organization as an institution to enforce reasonable rules as to the responsibility of every member toward the organization. Indeed §609 states that it shall be unlawful to fine, suspend, expel, or otherwise discipline "any" of its members for exercising "any" right to which he is entitled under the provisions of this Chapter. Surely the words "every" and "any" were intended by Congress to have their ordinary and common meaning. To carve out an exception for members who are appointed business agents who campaign or run for office flies in th face of the common and ordinary meaning of the words "any" and "every". The LEGISLATIVE HISTORY does not reflect an intention to carve out such an exception and the debate sheds little light on the LEGISLATIVE HISTORY OF THE BILL OF RIGHTS from the House point of view.[2] However, the LEGISLATIVE HISTORY does reflect that several senators including Senator Kennedy stated for the LEGISLATIVE HISTORY that the enumeration of certain rights was not intended to have the effect of excluding other rights.[3] Thus

---

2. See Rothman, *Legislative History of the Bill of Rights for Union Members*, Volume 45 MINNESOTA LAW REVIEW 199 at 208.

3. *Id.* at 210; See also remarks of Senators Cooper and Kennedy at II LEGISLATIVE HISTORY 1233 (1). Senator Holland also remarked that, "It seems to me that such reference should be added, to make complete the showing that nothing is excluded by the inclusion of the rights which are included, or the details which are included in *any* of the sections." (Emphasis added)

(Continued on following page)

whenever there was a concern that the statute might be interpreted to exclude some rights or some individuals specific mention was made for the record.[4]

Indeed it appears that the only discussion about excluding officers from the coverage of the Bill of Rights dealt with §101(a)(5). Moreover, little discussion of this provision took place on either floor of Congress. However the conference report and chief conferees all made clear that §101(a)(5) was not intended to apply to suspension of a union member's status as an officer of the union.[5] Petitioners do not dispute that officers were not intended to be covered by this section and the courts are virtually unanimous that such procedural rights do not apply.[6] See

---

Footnote continued—

II LEGISLATIVE HISTORY 1233 (2). Senator Church also remarked that the redrafting was not for the purpose of weakening or limiting the fundamental rights but was only necessary to eliminate the unnecessary provisions which would harass and obstruct the achievement of that end. Senator Church believed that the redrafting of the Bill improved the guarantees of the fundamental rights which were sought and stated that, "We have not altered the objectives sought by the distinguished Senator from Arkansas. I believe that the Bill has not been weakened but, instead, improved for the benefit of the working people and for the benefit of the public at large." II LEGISLATIVE HISTORY 1233 (2) (3). Thus the LEGISLATIVE HISTORY reflects that words contained in the specific rights sections should be read broadly rather than in the restricted sense which *Amici* AFL-CIO urges upon the court.

4. In the same vein, Senator Goldwater expressed grave misgivings concerning the retention of the "reasonable rules" proposal, because it would preserve the union's right to limit member's rights merely by constitutional or rules provision. In rebuttal, Senator Kuchel stated for the LEGISLATIVE HISTORY that this "was not the intention of his group." Rothman, *Legislative History of the Bill of Rights for Union Members*, 45 MINNESOTA LAW REVIEW 199 at 211.

5. Rothman *Id.* at 216.

6. Congress' primary concern was that §101(a)(5) should not bar summary removal of union officials suspected of malfeasance in order to protect the union as an institution from harm pending the outcome of the trial and charges on malfeasance. *Grand Lodge v. King, infra; Wood v. Dennis, infra.*

Grand Lodge v. King, 335 F.2d at 340, 56 L.R.R.M. at 2642; *Wood v. Dennis*, 489 F.2d at 857, 84 L.R.R.M. at 2664.

Petitioners submit that Congress assumed that the word "members" in §101(a)(2) and §609 of the LMRDA included officers and officials as well. If Congress had not assumed this then mention would have been made that officer members were being excluded. To this extent Petitioners agree with the analysis of the LEGISLATIVE HISTORY set forth in *Amici Curiae* Association for Union Democracy's brief at pages 5-13.

Moreover, the AFL-CIO argues that, because the right-privilege distinction was still alive and kicking in 1959, Congress must have intended to allow discharge of union officers because of their exercise of free speech rights (pages 18-19 of its brief). While it is not clear how much of that doctrine was left in 1959 it is clear that Congress' intent in adopting the Bill of Rights was to apply the Constitutional Bill of Rights in the union context.[7] Moreover, Congress did not have specific restrictions on free speech rights in mind; rather, it intended that the courts should decide on a case-by-case basis what was reasonable.[8] The question, therefore, is not to be determined by deciding how far the court had travelled by 1959 on the road from *Adler* to *Pickering* as suggested by the AFL-CIO.

After all, Congress passed the Civil Rights Act of 1871 long before the "laws of the United States" were under-

---

7. See Remarks of Senator Griffin at II LEGISLATIVE HISTORY 1566 (3).

8. See Senator Javitz' speech at II LEGISLATIVE HISTORY 1238(2); See also Remarks of Senator Kuchel at II LEGISLATIVE HISTORY 1232(2).

stood to forbid segregation in education (*Brown v. Board of Education*, 347 U.S. 483 (1954)), yet no one could contend that 42 U.S.C. §1983 cannot be used to attack dual school systems or remedy public employer discrimination against non-citizens, *Sugarman v. Dougall*, 413 U.S. 634 (1974); *In Re Griffiths*, 413 U.S. 717 (1973). The same Act was passed long before "white citizens" were understood to enjoy "rights" of many kinds, denial which to blacks are actionable under 42 U.S.C. §1981. Where Congress' purpose was to provide a statutory guarantee of constitutional rights, the "rights" are not frozen into place as of the time of the passage of the statute.[9]

Indeed, to accept the AFL-CIO's argument would mean that, because the court had not yet decided *New York Times v. Sullivan*, 376 U.S. 254 (1964), the LMRDA would provide no protection against discipline based on false statements; yet the circuits which have considered that issue have held to the contrary, *e.g.*, *Salzhandler v. Caputo*, 316 F.2d 445 (2nd Cir., 1963). Moreover, because the First Amendment doctrines of vagueness, overbreadth and chilling effect were at best at an early stage of development, they would be useless in LMRDA litigation, though the Courts of Appeal have borrowed freely from them for reasoning by analogy, e.g., *Semancik v. UMW*, 466 F.2d 144 (3rd Cir., 1972); *Mallick v. IBEW*, 644 F.2d 228 (3rd Cir., 1981); *Turner v. Machinists Lodge 1894*, 590 F.2d 409 (2nd Cir., 1978). Thus the mere fact that the state of First Amendment law was less

---

9. Section 1983 incorporates the Fourteenth Amendment requirement that the state not engage in wholly irrational or "suspect" classifications, which would constitute a denial of "the equal protection of the law." For an analysis of this court's changing approach in evaluating equal protection claims, *see* Gunther, Foreward: *In Search of an Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 HARV. L. REV. 1 (1972).

developed in 1959 than it may be presently should not bar recognition of statutory protections.[10] The special circumstances of union democracy demand more protection for union appointees than for public employees, not less.[11]

II. PETITIONERS ARE NOT REQUESTING THAT A CIVIL SERVICE RULE BE ADOPTED TO PROTECT APPOINTED OFFICIALS.

Both Respondents (at page 20 of its brief) and the AFL-CIO (at pages 4 and 20) contend that prohibiting the retaliatory discharges of the Petitioner business agents would allow them to stay on the union payroll forever. Indeed the AFL-CIO goes so far as to say that a "civil service" rule is being requested. §101(a)(2) doesn't impose a civil service system on unions anymore than Title VII of the Civil Rights Act or Section 8(a) of the National Labor Relations Act imposes a civil service system on private corporations, or the First Amendment imposes one on public employers. This is the *Wambles* fallacy that Petitioners specifically criticized at page 24 of their brief. The proviso to §101(a)(2) permits the labor organization as an institution to submit such members' conduct to reasonable rules with respect to meetings, deliberations, etc. Unions can remove officers for misconduct and malfeasance and are only proscribed from doing so because of the exercise of Title I rights.[12]

---

10. AFL-CIO contends that denial of the union death benefit because of free speech would violate Title I (Brief at 9 footnote 5). However, the extent to which "unconstitutional conditions" could be attached to the receipt of Social Security benefits was at least an open question in 1959. See *Fleming v. Nestor*, 363 U.S. 603 (1960).

11. See Petitioners' Brief at 22-27 and *Amici Curiae* Association for Union Democracy's brief at 7-13.

12. *Sewell v. Machinists*, 445 F.2d 545 (5th Cir., 1971), *cert. denied*, 404 U.S. 1024 (1972).

Moreover, the AFL-CIO suggests in its summary of argument that different rules might be applied to discharge of appointees based on criticism, rather than support, of incumbents or their policies, or for persons who were elected to their positions. See pages 2 through 4 of their brief. Logically, however, this distinction disappears in its substantive argument for the rationale it advances would cover all situations equally. It is virtually impossible to preclude relief in the instant case while preserving it for the factual patterns set forth by the AFL-CIO. The AFL-CIO's reasoning is illogical because it appears to apply only to insurgents elected to office who wish to remove incumbents who oppose them. For if the rationale is applied to incumbents who are reelected, then surely incumbents can utilize it as an excuse to discharge or discipline any officials who have in the past criticized their actions, failed to support them, or who the incumbents fear may be about to criticize their policies or to oppose them in some way. What the AFL-CIO has conveniently done is to assume factual patterns which appear to be more appealing for relief but which logically cannot be justified.[13]

---

13. Moreover the AFL-CIO has assumed in its analysis a factual pattern which does not exist, i.e., Leu's election evidenced a mandate by the members of the union. See n. 14.

III. THE FACTS IN THIS CASE DEMONSTRATE THAT UNION DEMOCRACY IS NOT BEING FOSTERED BY PERMITTING THE RETALIATORY DISCHARGES OF THE APPOINTED BUSINESS AGENTS BECAUSE THIS CASE REPRESENTS A FACT SITUATION CONTRARY TO THE FACT SITUATION ASSUMED BY RESPONDENT, AMICUS CURIAE AFL-CIO AND AMICUS CURIAE NATIONAL LABOR LAW CENTER.

The National Labor Law Center sets forth at pages 17 through 19 of its brief certain alleged undisputed facts. While it may be undisputed and true that the business agents of IBT Local 20 were full time salaried employees appointed by the local president, and under the union by-laws, serving at the pleasure of the president, most of the remaining assumptions and facts assumed by the National Labor Law Center are erroneous. At best the record is unclear and this case must be remanded to trial to determine:[14]

1. Whether the joint resignation of all business agents in 1974 upon the election of the new president indicated an understanding that it was the prerogative and practice for a president to appoint new business

---

14. While it is true that Leu won the presidency of Local 20, it is not true that the membership endorsed his policies and programs and neither is it true that democratic purposes of the Labor-Management Reporting and Disclosure Act demand that elected union officers be permitted to remove appointed employees of the union who oppose them. Leu was declared the victor in this election by a mere 29 votes out of 3,500 and during a turnout for an election which was very poor due to a blizzard which hit the Northwest Ohio area. *Marshall v. Teamsters Local 20*, 611 F.2d 645, 103 L.R.R.M. 2111 (6th Cir., 1979). Brown's entire slate was elected to the other union positions. Moreover Leu was only able to bring about his slim margin of victory by accepting and receiving thousands of dollars of employer contributions for his campaign and ultimately after an investigation by the Secretary of Labor the election was overturned but too late to benefit the business agents in the instant action.

agents at the beginning of his administration or whether the joint resignation was a deliberate attempt by Leu after losing the supervised rerun election to throw the local union into trusteeship?

2. Whether the Stewards' Council is the legislative and long-range policy-making body for the local union or whether that is a function actually carried out by the Executive Board and officers of Teamsters Local 20?

3. Whether the business agents conduct collective bargaining negotiations or whether the business agents are on a shop committee composed of stewards and rank-and-file members who conduct such negotiations?

4. Whether the business agents make a determination whether to take a grievance to arbitration or whether the Executive Board of Teamsters Local 20 makes such a determination?

5. Whether business agents have substantial responsibility for and discretion in the enforcement of the contracts or whether this responsibility is basically handled by shop stewards and chief stewards?

6. Whether the Stewards' Council is small or very large comprising 800 to 1,000 stewards and whether the 15 business agents' vote would directly control the president's policies or whether their seat on the council is more of a voice and freedom of expression at such Stewards' meetings?

7. Whether the business agents negotiate the freight collective bargaining agreements or whether these collective bargaining agreements are actually negotiated by a master freight negotiating committee at the national level?

8. Whether Leu's campaign was based upon a direct attack of the business agents' performance or an attack against the Brown slate officers all of whom were elected?

9. Whether the business agents engage in organizing or whether organizing was actually performed by a full time business agent who successfully increased the membership of Local 20 by over 1,000 to 2,000 new members in less than two years?[15]

Similarly the AFL-CIO also assumes crucial facts in setting forth its rather detailed argument that interpretation of the LEGISLATIVE HISTORY requires that discharges of appointed officials in the election context is not discipline within the meaning of §609 or an infringement within the meaning of §101(a)(2). The seemingly logical and legalistic interpretation of the LEGISLATIVE HISTORY disappears when one focuses on the qualifier utilized by the AFL-CIO, "in this particular context." The thrust of this argument assumes that Leu received a mandate of the union membership when in fact the contrary is true. See note 14.

The context which the AFL-CIO is alluding to is some non-retaliatory, non-disciplinary situation following an election whereby an insurgent reformer receives some sort of mandate from the membership endorsing the removal.[16] In the retaliatory context, the AFL-CIO appears to argue for protection of appointed officials. But if the discharge is retaliatory it doesn't matter in which context it arises in, for if it is based upon the exercise of the

---

15. Petitioners submit that a trial will show that the latter half of each question is actually the case.

16. It is doubtful that such a non-retaliatory situation could ever exist following a union election.

rights intended to be protected by Landrum-Griffin it cannot be justified. *Grand Lodge v. King*, 335 F.2d 340, 56 L.R.R.M. 2639 (9th Cir., 1959), *cert. denied*, 379 U.S. 920, 57 L.R.R.M. 2512 (1964); *DeCampli v. Greeley*, 293 F. Supp. 746, 69 L.R.R.M. 2786 (D.N.J. 1968); *Retail Clerks Union, Local 648 v. Retail Clerks International Association*, 299 F. Supp. 1012, 70 L.R.R.M. 3366 (D.D.C. 1969); *George v. Bricklayers Union*, 225 F. Supp. 239 (E.D. Wisc. 1966); *Price v. United Mine Workers*, 376 F. Supp. 1015, 86 L.R.R.M. 2577 (D.D.C. 1974); *aff'd without opinion*, 515 F.2d 1018 (D.C. Cir., 1975), 90 L.R.R.M. 2844; *Alvino v. Bakery Workers Union*, 46 L.R.R.M. 2812 (D.D.C. 1910), approved in *Bakery & Confectionary Workers International Union v. Ratner*, 335 F.2d 691, 56 L.R.R.M. 2432 (D.C. Cir., 1964).

In short the Respondents and their *amici* argue that, even assuming the adoption of a construction of the statute providing some protection for the rights of union members who hold office, the decision below should be affirmed.[17] Their briefs in this regard are written as if there has been a trial, and that the clearly erroneous standard would be applicable. They simply recite favorable portions of the record and they ignore contradictory parts. See J.A. 54-61, Deposition of Richard Eddington, page 69; and the Deposition of Harold D. Leu at page 82. The standard on summary judgment, however, is whether the Defendants are entitled to a judgment as a matter of law on the undisputed material facts. Moreover, on summary judgment, "the inferences to be drawn from the underlying facts contained in such materials must be viewed in the light most favorable to the party opposing the motion." *United*

17. More realistically, the AFL-CIO implicitly concedes that in such an event a trial would be required to resolve the case. (See their brief at page 17 note 10.)

States v. Diebold, Inc., 369 U.S. 654 (1962); *Adickes v. S. H. Kress & Co.*, 398 U.S. 144 (1970).

It is clear that the facts in the instant case are in dispute and that the record is incomplete.[18] Accordingly, summary judgment was improper, and the judgments below should be reversed.

CONCLUSION

For the foregoing reasons as well as the reasons set forth in Petitioners' Brief, the judgment of the Court of Appeals and District Court should be reversed.

Respectfully submitted,

SAMUEL G. BOLOTIN
(Counsel of Record)
BOLOTIN & BOLOTIN CO., L.P.A.
2nd Floor Gardner Building
506 Madison Avenue
Toledo, Ohio 43604
(419) 241-1900
Counsel for Petitioners

---

18. Assuming arguendo that the issue set forth in *Mount Healthy City School District Board of Education v. Doyle*, 429 U.S. 274 (1977) and the issue set forth in *Branti v. Finkel*, 445 U.S. 507 (1980) should have been applied by the courts below then further proceedings are necessary to make the proper factual determinations required by either or both of these decisions. It must be observed however that petitioners do not necessarily agree that either standard should be applied. It must also be noted that the standards developed in the *Mount Healthy* and *Branti* decisions were arrived at only after plenary trials.

MOTION FILED
DEC 31 1981

No. 80-2150

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

DONALD FINNEGAN, *et al.*,
Petitioners,
v.
HAROLD E. LEU, *et al.*,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

MOTION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE AND BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

J. ALBERT WOLL
815 15th Street, N.W.
Washington, D.C. 20005

MARSHA BERZON
177 Post Street
San Francisco, Calif. 94108

LAURENCE GOLD
815 16th Street, N.W.
Washington, D.C. 20006
202/637-5390
(Counsel of Record)

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. 80-2150

DONALD FINNEGAN, *et al.*,
Petitioners,

v.

HAROLD E. LEU, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

MOTION BY THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS FOR LEAVE TO FILE A BRIEF AMICUS CURIAE IN SUPPORT OF RESPONDENTS

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) respectfully moves this Court for leave to file the accompanying brief *amicus curiae* in support of the position of the respondents in this case.

INTEREST OF THE AFL-CIO AND THE ISSUES TO BE COVERED IN THE AFL-CIO'S BRIEF AMICUS CURIAE

The AFL-CIO is a federation of 102 national and international unions with a total membership of 14,500,000 working men and women. This case presents a question concerning the scope of the Labor Management Reporting and Disclosure Act—whether that Act protects appointed union officials who actively campaign during a union election from discharge by the candidate they opposed if he is elected and replacement by appointees of that elected officer's own choice—that is of substantial importance in the administration both of that Act and

of the unions subject to its provisions. The Federation and its affiliates therefore have a concomitant interest in the outcome.

Consistent with that interest the attached brief *amicus curiae* is devoted to demonstrating: First, that there is a range of situations involving the discharge of union officials, each of which should be carefully distinguished from the others and evaluated on its own terms, and that the decision here should address only the variant before the Court—the discharge by a newly elected union administration of appointed union officials such as business agents; second, that it is wrong to read § 609 of the LMRDA, 29 U.S.C. § 529—which prohibits "discipline" based on exercise of a right protected by the Act—as reaching the discharge of such appointed union officials; and, third, that the pertinent legislative materials establish that a discharge of such an official who has been engaged in campaign activity does not "infringe" the free speech rights protected by § 101(a)(2) of the LMRDA, 29 U.S.C. § 411(a)(2). The sum of our presentation is that whatever may be the outcome in other contexts the discharges here were lawful.

CONCLUSION

For the above stated reasons this motion for leave to file a brief amicus curiae should be granted.

Respectfully submitted,

J. ALBERT WOLL
815 15th Street, N.W.
Washington, D.C. 20005

MARSHA BERZON
177 Post Street
San Francisco, Calif. 94108

LAURENCE GOLD
815 16th Street, N.W.
Washington, D.C. 20006
202/637-5390
(Counsel of Record)

TABLE OF CONTENTS

MOTION:	Page
Interest of the AFL-CIO and the Issues to be Covered in the AFL-CIO's Brief Amicus Curiae..	i
Conclusion	ii
BRIEF:	
Introduction and Summary of Argument	1
Argument	7
I. Section 609 of the LMRDA Does Not Create a Per Se Rule Against Discharge or Removal of Appointed Union Officials Who Engage in Campaign Activity	7
II. Discharge by a Newly-Elected Administration of a Union Official Who Has Engaged in Campaign Activity Does Not "Infringe" The Free Speech Rights Protected by § 101(a)(2) of the LMRDA	13
Conclusion	22

TABLE OF AUTHORITIES

Cases:	Page
Adler v. Board of Education, 342 U.S. 485	14, 16
Alomar v. Dwyer, 447 F.2d 482, 483 (2nd Cir. 1971), *cert. denied*, 404 U.S. 1020 (1972)	16
American Federation of State, County and Municipal Employees v. Shapp, 442 Pa. 527, 280 A.2d 375, 378 (1971)	16
Branti v. Finkel, 445 U.S. 507	15, 16, 17
Brown v. GSA, 425 U.S. 820	5, 14
Elrod v. Burns, 427 U.S. 347	16
Grand Lodge v. King, 335 F.2d 340 (9th Cir. 1960), *cert. denied*, 397 U.S. 920 (1964)	11
Illinois State Employees Union v. Lewis, 473 F.2d 561 (7th Cir. 1972)	16
Keyishian v. Board of Regents, 385 U.S. 589	16
Maceira v. Pagan, 649 F.2d 8 (1st Cir. 1981)	3
McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316	4
Moor v. County of Alameda, 411 U.S. 693	5, 14
Newman v. Local 1101, Communications Workers, 570 F.2d 439 (2d Cir. 1978)	3
Norton v. Blaylock, 409 F.2d 772 (8th Cir. 1969), *affirming* 285 F. Supp. 659 (W.D. Art. 1968)	16
Perrin v. United States, 444 U.S. 37	5, 14
Pickering v. Board of Education, 391 U.S. 563	12, 16, 17
Richards v. United States, 369 U.S. 1	5, 19
Sewell v. Machinists, 445 F.2d 545 (5th Cir. 1971), *cert. denied*, 404 U.S. 1024 (1972)	3
Sheridan v. Carpenters Local No. 626, 306 F.2d 152 (3d Cir. 1962)	2
Shelton v. Tucker, 364 U.S. 479	16
Speiser v. Randall, 357 U.S. 513	15, 17
Torcaso v. Watkins, 367 U.S. 488	16
Wieman v. Updegraff, 344 U.S. 183	15, 17, 18
Wirtz v. Glass Bottle Blowers Assoc., 389 U.S. 463	20
Wood v. Dennis, 489 F.2d 849 (7th Cir. 1973), *cert. denied*, 415 U.S. 960 (1974)	2, 11, 18
Woodwork Manufacturers v. NLRB, 386 U.S. 612	4

TABLE OF AUTHORITIES—Continued

Statutes: Page

The Labor Management Reporting and Disclosure Act:

§ 3(g), 29 U.S.C. § 402(g) 17
§ 3(n), 29 U.S.C. § 402(n) 18, 19, 20
§ 102(a)(2), 29 U.S.C. § 411(a)(2) ..... *passim*
§ 101(a)(5), 29 U.S.C. § 411(a)(5) 9, 10, 11, 12
§ 102, 29 U.S.C. § 529 ..... *passim*
§ 201(a), 29 U.S.C. § 431(a) 8, 9
§ 401(e), 29 U.S.C. § 481(e) 8, 18, 19
§ 501(a), 29 U.S.C. § 501(a) 17
§ 609, 29 U.S.C. § 529 ..... *passim*

Miscellaneous:

104 Congressional Record 21, 22
National Labor Relation's Board "Legislative History of the Labor-Management Reporting and Disclosure Act of 1959" (G.P.O., 1959) ..... *passim*

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. 80-2150

DONALD FINNEGAN, *et al.*,
Petitioners,

v.

HAROLD E. LEU, *et al.*,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

This brief *amicus curiae* is filed contingent on the granting of the foregoing motion for leave to file said brief. The interest of the AFL-CIO in this case is set forth in that motion.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case concerns the legality of discharges by a newly-elected chief union officer of certain of the union's business agents—officials who have substantial independence in carrying out tasks central to the union's responsibilities as exclusive collective bargaining agent.[1] The

[1] While the record upon the role of business agents here is not fully developed, it is established that the business agents have at least the following responsibilities: Negotiation of collective bargaining agreements, subject to final approval by the president (Jt. App. 11, 13); organizing (Jt. App. 13, 42); and processing and "resolving" grievances (Jt. App. 27). All of these tasks, by their very nature, involve daily interaction as representatives of the union with the outside world, including em-

union's bylaws it is undisputed grant the chief officer the authority to hire and fire the business agents. But the discharges, it is claimed, were "as a result of" (Jt. App. 5) those officials' campaign activities on behalf of the new officer's opponent, and for that reason, it is argued, the discharges violate § 101(a)(2) of the Labor-Management Reporting and Disclosure Act ("LMRDA"), § 29 U.S.C. § 411(a)(2), the Act's "free speech and assembly" provision. Thus the case before the Court presents one of several generic situations in which union officers and employees have claimed protection from discharge under § 101(a)(2) and the LMRDA's related remedial provisions, §§ 102 and 609, 29 U.S.C. §§ 412 and 529. It is therefore well to have in mind some of the major variations on this theme at the outset.

For example, *elected officers* removed from office by other officers because of policy disagreements with, or plans to oppose the candidacy of, those other officers have also claimed the protection of § 101(1)(a)(2). See, *e.g.*, *Wood v. Dennis*, 489 F.2d 849 (7th Cir. 1973), *cert. denied* 415 U.S. 960 (1974). One variant in the elected officer cases has involved removal of elected officers for their speech or campaign activities by vote of the membership at large or in a formal recall election, (*e.g.*, *Sheridan v. Carpenters Local No. 626*, 306 F.2d 152 (3rd Cir. 1962)), while another has concerned removal of persons who had been elected to their positions but who are not "officers" as that term is defined in § 3(n)

---

ployers, union employees, and non-union employees, and a large measure of on-the-spot decision-making regarding the application of general union policy to particular, immediate situations. For example, while the union president is "the only one who can sign contracts in behalf of the local" (Jt. App. 13), he simply reviews the agreements "after the contracts have been concluded." (*Id.*). Because of the dynamic of negotiations, as a practical matter this structure empowers the actual negotiator to make decisions over the bargaining table concerning both substance and tactics which in most cases determine the final outcome of the negotiations.

of the LMRDA, 29 U.S.C. § 402(n) (*e.g.*, *Newman v. Local 1101, Communication Workers*, 570 F.2d 439 (2d Cir. 1978); *Maceira v. Pagan*, 649 F.2d 8 (1st Cir. 1981)).

Yet another factual pattern is one in which the plaintiffs are, as in this case, appointed officials, and the discharge has occurred not as part of a newly-elected administration's assumption of power but was caused by an existing administration because the employee publicly opposed that administration, either on a particular policy issue or with respect to an impending election (*e.g.*, *Sewell v. Machinists*, 445 F.2d 545 (5th Cir. 1971), *cert. denied*, 404 U.S. 1024 (1972)).[2]

The petitioners and the *amici curiae* appearing on their behalf in this Court have approached this case on the premise that the identical rule must govern in several or in all of these contexts. Petitioners press the absolutist position that "the removal from a union position as a result of the expression of political views [always] infringes upon rights protected by 29 U.S.C.A. § 411(a)(1) and (2)" (Pet. Br. at 15), citing on behalf of this proposition cases involving nearly all of the different generic situations described above (*id.* at 14-15). Similarly, *amici curiae* Association for Union Democracy et al.,

---

[2] Even more remotely related are situations in which a union member who is *not* an officer or employee claims that the union caused him or her to be discharged from, or not hired for, a position with an entity *other* than the union. Indeed, petitioners in their Brief make allegations of this type. Brief for Petitioners ("Pet. Br.") at 7-9, 32-34. However, the questions whether such alleged economic harassment in fact occurred and, if so, whether an LMRDA violation is thereby established as a legal matter, were neither encompassed by the complaint in this case nor "fairly included" (Rule 21, Supreme Court Rules) in the question presented to this Court for review. *See* Jt. App. 4-6; Petition for a Writ of Certiorari at (i); Pet. Br. at (i); *see also* Pet. App. A 8-9. Therefore, only the propriety of petitioners' discharge *as business agents* is properly before this Court, and we discuss only that question.

while disavowing any *per se* rule as to union employees (Brief of the Association for Union Democracy et al. as Amici Curiae ("AUD Br.") at 22) and recognizing that the situation of elected officers may present substantially different issues (*id.* at 21 n. 18), bases its analysis primarily upon the needs of appointed officials "removed not for supporting defeated incumbents, but rather for speaking out against the superiors who put them in office in the first place," (*id.* at 3). The *amici curiae* justify this deflection of attention from the actual context of *this* case —which, they concede, is one in which there are "attractive" arguments favoring affirmance (*id.*)—on the unjustified assumption that "[i]n this case, the Court will promulgate an authoritative construction of the LMRDA which will govern both situations," (*id.*).

It is the thesis of this brief that any such broad-swathed approach is inappropriate. The central question presented here is whether Congress in enacting Title I meant to establish the equivalent of a civil service system at every level of union staff, forbidding unions to provide in their constitutions for a government responsive to the election returns by assuring a newly-elected administration a free hand in appointing at least the principal union staff. To go beyond an inquiry into Congressional intent upon that issue is to forget that, even though Title I of the LMRDA in some measure draws upon the federal Constitution, in the end—to reverse Chief Justice Marshall's admonition in *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316,—it is a *statute* not a constitution, which must be expounded in this case. As such, the courts' task is to " 'reconstitute the gamut of values current at the time when the words were uttered' " (*Woodwork Manufacturers v. NLRB*, 386 U.S. 612, 620, *quoting* Judge Learned Hand)[3], rather than expounding generalizations that may

[3] The full text of Judge Hand's statement on the judicial role in interpreting statutes is set out in Lesnick, *The Gravamen of the Secondary Boycott*, 62 Col. L. Rev. 1363, 1393-94 n.155 (1962).

compromise the available statutory materials when applied to a different situation.

To aid in the task of reconstructing with respect to a concrete situation the frame of reference of the enacting Congress, this Court has developed over the years several modes of inquiry. As we show in Part II of the Argument, two of these are of great aid in divining whether Congress in 1959 intended to prevent newly-elected union officers from choosing on any basis whatever, including personal loyalty and political support in the campaign, key operating staff members, and discharging those previously holding those positions.

The first is the rule that because "words [should be] interpreted as taking their ordinary, *contemporary*, common meanings" (*Perrin v. United States*, 444 U.S. 37, 42 (emphasis supplied)), words with obvious reference to existing legal concepts should be read consistently with the judicial understanding of those concepts at the time the statute was enacted (*id.* at 42-45). Here, because there are legislative indications that Title I of the LMRDA was drawn from the Constitution's Bill of Rights, the state of constitutional law in 1959 concerning issues analogous to that in this case is of great relevance as an indicia of congressional intent. *Brown v. GSA*, 425 U.S. 820, 828; *Moor v. County of Alameda*, 411 U.S. 693, 709.

Secondly, it is also "fundamental that a section of a statute should not be read in isolation from the context of the whole Act." *Richards v. United States*, 369 U.S. 1, 11. Consequently, the construction of § 101(a)(2) in this case should take account of Title IV, the election provisions, and, as well, of other LMRDA provisions in which Congress evidenced a general view of the role of key union staff.

Wherever these indicia of intent might point in the other generic contexts mentioned above, in the present

context, the language of the LMRDA, the evolution of the statute and the legislative debates read in light of these established aids to statutory interpretation demonstrate that petitioners' discharge is not made unlawful by §§ 101(a)(2) & 102.

Before proceeding to the discussion of the legislative and judicial materials pertinent to this particular type of union-official-discharge case, however, we address in Part I of the Argument the contention that Congress itself precluded a context-specific approach by expressly setting out, in § 609 of the Act, 29 U.S.C. § 529, a *per se* rule against any discharge of a union official, elected or appointed, stemming from the exercise of rights protected by Title I, including the right to campaign in union elections. To read § 609 in this way, we demonstrate, would ignore several compelling indications in the statute and its history that the section's proscription of "discipline" was not intended to refer to detrimental action by a union generally, or to removal from an appointed union position particularly. Further, such a construction of § 609 would ascribe to Congress a *sub silentio*, absolutist decision upon a set of questions as to which there are substantial policy considerations on both sides; yet, in enacting the LMRDA, Congress demonstrated a marked tendency to balance the rights created against legitimate union interests, tempering those rights when it was persuaded after due consideration that a *per se* approach would unnecessarily compromise the independence of unions and their ability to function effectively. Since there is absolutely no affirmative evidence that Congress intended a *per se* approach to discharges of union personnel on the basis of expressive activity and considerable evidence to the contrary, reading § 609 as forbidding a context-specific analysis cannot be justified.

ARGUMENT

There was in this case no rule of any kind forbidding petitioners from campaigning during a union election and they did in fact vigorously campaign for the incumbent during the election period. The question, then, is whether as a matter of statutory construction Title I's protection of the right to express "views, opinions and arguments" guarantees appointed union officials who engage in such campaigning the right to retain their union positions regardless of the outcome of that election.

I. Section 609 of the LMRDA Does Not Create a Per Se Rule Against Discharge or Removal of Appointed Union Officials Who Engage in Campaign Activity.

Petitioners' approach to this case is based upon a simplistic syllogism: § 609 of the Act, 29 U.S.C. § 529, forbids "any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under [this Act]," and provides a civil cause of action for enforcement of that prohibition. Discharge from a union position is, without more, "discipline," the argument runs, and since members clearly have the right, under Title IV as well as under Title I, to support candidates for union office, discharge of a union employee because of campaign activity becomes, on this construction, a *per se* violation of § 609.

The fatal flaw in this approach is that it assumes that discharge of a union employee is "discipline" within the meaning of § 609. Yet, the language, structure, and history of the statute conclusively demonstrate that "discipline" was *not* intended as a broad term referring to all adverse actions a union might take with regard to a person who is also a member, and, in particular, was *not* intended to refer to discharge of union employees.

First, the thrust of what is now § 609 originated as an amendment offered by the minority in the Senate Committee on Labor and Public Welfare and first officially appeared, as a criminal rather than civil prohibition, as part of § 506 of the version of the Committee bill reported to the Senate. *See*, 86th Cong., 1st Sess., S.1555, as reported, § 506(a), I Leg. Hist. 390; S. Rep. No. 187 on S.1555, 86th Cong., 1st Sess. (1959) at 94, I Leg. Hist. 490 (Minority Views of Senators Goldwater and Dirksen).[4] At the same time the predecessor to § 609 was originally added to that bill, several other additions suggested by the Senate Committee minority which survived to be enacted were added as well. One was the language in § 401(e) which assures each member "the right to vote for or otherwise support the candidate or candidates of his choice, *without being subject to penalty, discipline or improper interference or reprisal of any kind.*" (Emphasis supplied). *See*, S.1555 as reported, *supra*, at § 301(d), I Leg. Hist. 373; S. Rep. No. 187, *supra*, at 92-93, I Leg. Hist. 488-489 (Minority views of Senators Goldwater and Dirksen). Another was an addition to what is presently § 201(a) of the Act, 29 U.S.C. § 431(a) requiring the reporting by unions of

---

[4] We note that § 609 was clearly intended to protect against certain reprisals for exercise of rights conferred by Title IV, even though those rights when infringed directly are enforceable only by a suit by the Secretary of Labor to overturn an election. At the time, Title I was not in the bill at all, so that § 506 clearly referred to "rights" other than those conferred by Title I. Statements on the floor of both houses confirm that the provision which became § 609 was expressly understood to be applicable to Title IV generally, and to § 401(e) particularly. II Leg. Hist. 1116 (remarks of Sen. Prouty); II Leg. Hist. 1140-41 (colloquy between Sens. Kennedy & Prouty); II Leg. Hist. 1567 (remarks of Rep. Griffin). *See also* II Leg. Hist. 1233 (remarks of Sen. Kennedy); II Leg. Hist. 1286 (Reprint of Testimony of Sen. Goldwater before the House Committee on Education and Labor subsequent to passage of the Senate bill).

As used herein "Leg. Hist." refers to the National Labor Relations Board's "Legislative History of the Labor-Management Reporting and Disclosure Act of 1959" (G.P.O., 1959).

provisions for "*discipline or removal* of officers or agents" (emphasis supplied).[5] *See* S.1555 as reported, *supra*, § 101(a)(5)(iii), I. Leg. Hist. at 343; S. Rep. No. 187, *supra*, at 89, I. Leg. Hist. at 495 (Minority views of Senators Goldwater and Dirksen). In these two sections of the Act, "discipline" is plainly used as a limited term, synonymous neither with reprisals or penalties for exercise of rights generally, nor with removal from a union position particularly. Otherwise, both sections would be hopelessly internally redundant. There is no reason to suppose that the term suddenly became all-encompassing when the same draftsmen at the same time referred to "discipline" in then-section 506.

Second, the original version of what became the "bill of rights" portion of the Act, Title I, proposed by Senator McClellan, and adopted by a 47-46 vote of the Senate, contained provisions protecting the right to engage in free speech and assembly "without being subject to penalty, discipline or interference of any kind." II. Leg. Hist. 1102, 1119. In addition, Senator McClellan's proposal contained a criminal penalty for willful interference with the rights protected by Title I. Because many Senators concluded, when there was time to read the McClellan amendment more carefully, that it was poorly drafted and "would unduly harass and obstruct legitimate unionism" (II. Leg. Hist. 1233 (remarks of Sen. Church); *see also* II. Leg. Hist. 1229 (remarks of Sen. Kuchel), II. Leg. Hist. 1238 (remarks of Sen. Javits)), a bipartisan substitute amendment was adopted which

---

[5] As the reference in § 201(a) to "discipline *or* removal" suggests, our point is *not* that the term "discipline" cannot sensibly be applied to actions affecting officers or employees. For example, we would agree that a union employee deprived of death benefits received as an incident of membership, or forbidden to speak at union meetings *has* been "disciplined" with the meaning of § 609, whether or not the reason for the discipline concerned the person's official duties. Rather, the point is that where the officer or employee is deprived not of incidents of membership but of prerogatives of office, including the position itself, he or she has not been "disciplined" as that term is uniformly used in the LMRDA.

"remove[d] the extremes raised by the amendment of the Senator from Arkansas." II. Leg. Hist. 1234 (remarks of Sen. Cooper). The Kuchel substitute contained § 101 (a) (2) in essentially the form it now appears in the Act.

This sequence has a double significance for present purposes: (a) Senator McClellan's choice of language—referring to "penalty" and "interference" *as well as* "discipline"—indicates once again that "discipline" was not understood as a term encompassing all types of adverse action; and (b) by *rejecting* the McClellan version, Congress necessarily rejected his broad, absolute approach regarding adverse actions based on the exercise of Title I rights of speech and assembly in favor of the more limited prohibition now contained in § 609. *See* II Leg. Hist. 1238 (colloquy between Senators Kefauver and Clark indicating that instead of the provision for penalties in the McClellan amendment, the authors of the substitute intended the provision which became § 609 to apply).[6]

Third, yet another indication that "fine, suspend, expel or otherwise discipline" was not intended to include discharge of union employees is the express legislative history made with regard to the other use of essentially that same phrase in the Act—§ 101(a)(5), assuring procedural protections before a union member can be "fine[d], suspend[ed], expelled or otherwise disciplined." The pertinent language of § 101(a)(5) was part of the McClellan "bill of rights" and then the Kuchel substitute. It is reasonable to suppose, therefore, that the language was taken directly from the predecessor to § 609, which was already in the Bill. In order to remove any possibility of misconstruction that the

---

[6] As finally enacted, § 609 provides for civil rather than criminal enforcement. The decision "to temper the remedies" was made in the House of Representatives as part of the Landrum-Griffin substitute (II Leg. Hist. 1568 (remarks of Rep. Griffin)).

"due process" provision might prevent or delay the removal of a corrupt union officer, the Conference Report took care expressly to negate any such reading. H.R. Conf. Rep. No. 1147, 86th Cong., 1st Sess. (1959) at 31, II Leg. Hist. at 935; II Leg. Hist. 1433 (remarks of Sen. Kennedy) ("[A]ll the conferees agreed that this provision does not relate to suspension *or removal* from a union office" (emphasis supplied).)

The leading lower court decision (*Grand Lodge v. King*, 335 F.2d 340 (9th Cir. 1964), *cert. denied*, 397 U.S. 920 (1964)) rests on the view that explicit construction of a parallel and derivative phrase within the same statute is not enough, standing alone, inexorably to substantiate that § 609 does not apply to discharge of union employees. Granting that it is nonetheless true that contradictory interpretations of the same locution within a single statute, while not entirely proscribed, are justified only where there are very strong contextual or historical reasons for believing that Congress used language inconsistently in a single enactment.[7] Since there is no such evidence, the explicit interpretation of § 101(a)(5) strongly confirms the other structural and historical indications, already discussed, that Congress did not intend "discipline" to refer to all adverse actions or in particular to encompass the discharge of union employees. We need not elaborate this critique of *King's* reasoning further for *our* analysis closely follows that of Judge Stevens' concurring opinion in *Wood v. Dennis*, *supra*, 489 F.2d at 857-858.

There are, then, numerous indications in the statute and its history that controvert the contention that Congress enacted § 609 as a *per se* ban upon discharging union officials on the basis of any actions declared by the statute to be a right of union members. Perhaps even

---

[7] In *King*, *supra*, the court was apparently unaware of the other, narrow uses of the term "discipline" in the statute, and, as well, of the narrow use of that term in the rejected McClellan version of Title I.

more significant is what is *not* evident—namely, *any* specific reference in the legislative history to discharge of union employees because of campaign activity as an abuse needing correction.[8]

This Court has recognized in the constitutional context that "it cannot be gainsaid that the State has interests as an employer in regulating the speech of its employees that differ significantly from those it posses in connection with regulation of the speech of the citizenry in general." *Pickering v. Board of Education*, 391 U.S. 563, 568. The union *qua* employer has similar interests. To read § 609 as creating a *per se* prohibition upon employee discharges based in any way on protected speech activity would be to ascribe to Congress an unarticulated decision uniformly to compromise those interests. Yet, in those instances in which legitimate countervailing union interests *were* raised and discussed, Congress often responded by suitably qualifying or limiting a right conferred by the bills. For example, as discussed above both the Kuchel substitute for the McClellan "bill of rights" and the legislative history interpretation of § 101(a)(5) were the result of a concern that the rights created not be so broad as to impede ability of unions to function effectively. It would be paradoxical to ascribe to Congress an intent to create a *per se* rule when no abuse was identified and where there are powerful countervailing practical considerations to which legislators would have been particularly sensitive.

---

[8] *Amici Curiae* Association for Union Democracy et al. does cite a few "remarks in the Congressional debates [which] reveal . . . [an] assumption that union officials *would be among the potential plaintiffs* under the Bill of Rights." (Emphasis supplied.) AUD Br., at 5-6 & n.4. But as we have noted (n.5, *supra*), the questino here is whether union employees are protected *from discharge* based on the exercise of § 101(a)(2) rights, not whether they are protected *at all* by that section from such actions as loss of membership, union fines, etc.

II. Discharge by a Newly-Elected Administration of a Union Official Who Has Engaged in Campaign Activity Does Not "Infringe" the Free Speech Rights Protected by § 101(a)(2) of The LMRDA.

To conclude that the LMRDA contains no *per se* rule against discharges of union employees who have engaged in expressive activity is not to decide the issue presented in this case. For, the question remains whether in this *particular* context the discharge "infringes" the employee's free speech and assembly rights under § 101(a)(2); if so, there would be a cause of action under § 102, 29 U.S.C. § 412, which prohibits such violations. The problem, then, is to decide whether the Congress that passed the LMRDA would have considered that petitioners' right to campaign in union elections was "infringed" by their later discharge when the candidate they had vigorously opposed took office.

A. As its title—"Bill of Rights of Members of Labor Organizations"—would indicate, the starting point for Title I was the first ten amendments to the federal Constitution. See, *e.g.*, II Leg. Hist. 1103 (remarks of Sen. McClellan). Indeed proponents of Title I in its final form stressed as a reason for supporting the Title that certain of the traditional, well understood rights of citizenship could safely be transposed, suitably adjusted, to the union context. "These basic guarantees *are hardly new or novel*—they are essential and fundamental rights which every American citizen is guaranteed in the Bill of Rights of the Federal Constitution." (II Leg. Hist. 1566 (remarks of Rep. Griffin) (emphasis supplied)). But Congress made a conscious judgment to place suitable limits on these guarantees. A major reason for the success of the Kuchel substitute was the desire to provide appropriately qualified, rather than absolute, rights of speech and assembly. See II Leg. Hist. 1230-31 (remarks of Sen. Kuchel); II Leg. Hist. 1117 (remarks of Sen. Javits). By virtue of that

substitute, the Act expressly permits "reasonable" rules of certain kinds to limit the rights of free expression accorded members. It is now well settled that in the First Amendment context it is not enough that limitations be "reasonable"; rather, they must be "necessary" to a "compelling" state interest. Thus, § 101(a)(2) on its face is narrower than the present First Amendment law.

With this limitation in mind and keeping sight of the assurance that Title I did not create "new or novel" rights, the proper place to begin is the 1959 understanding with regard to analogous issues concerning the situation of public employees under the Constitution. Cf. *Perrin v. United States, supra* (in interpreting statute passed in 1961 and permitting federal criminal prosecution for some cases of bribery, the understanding of the meaning of the term "bribery" as of 1961 is central); *Brown v. GSA, supra*, 425 U.S. at 828; *Moor v. County of Alameda*, 411 U.S. 693, 709.

As of 1959, this Court had never addressed the question whether states and municipalities could allow a newly-elected officer holder to freely choose his subordinates, based on their campaign activities and their policy views as well as on any other other reason, and to discharge incumbent officeholders on a similar basis. Considering the state of constitutional doctrine at the time concerning the First Amendment rights generally of public employees, the absence of any law directly on that subject is not surprising. For, only seven years previously, the Court had ruled, in *Adler v. Board of Education*, 342 U.S. 485, 492, that:

> It is clear that such persons have the right under our law to assemble, speak, think and believe as they will. *American Communications Ass'n v. Douds*, 339 U.S. 382. It is equally clear that they have no right to work for the State in the school system on their own terms. *United Public Workers v. Mitchell*, 330

> U.S. 75. They may work for the school system upon the reasonable terms laid down by the proper authorities of New York. If they do not choose to work on such terms, they are at liberty to retain their beliefs and associations and go elsewhere. Has the State thus deprived them of any right to free speech or assembly? We think not.

Adler was the most sweeping statement of the right/privilege doctrine as applied to public employees, the demise of which began in a small way later that same year in *Wieman v. Updegraff*, 344 U.S. 183. But, *Wieman* did *not* hold that simply discharging a public employee because of activity which could not under the First Amendment be directly proscribed is unlawful unless the Government is able to demonstrate "an overriding interest * * * of vital importance." Contrast *Branti v. Finkel*, 445 U.S. 507, 515-516. That approach to the First Amendment rights of public employees was still years away. Rather, *Wieman* stressed that an employee discharged for "disloyalty" had lost more than simply a job:

> There can be no dispute about the consequences visited upon a person excluded from public employment on disloyalty grounds. In the view of the community, the stain is a deep one; indeed, it has become a badge of infamy. Especially is this so in time of cold war and hot emotions when "each man begins to eye his neighbor as a possible enemy. [344 U.S. at 191.]

And, *Wieman*, far from applying the exacting scrutiny appropriate to First Amendment jurisprudence, concluded only that exclusion from public employment on disloyalty grounds cannot be accomplished under a "patently arbitrary or discriminatory" statute. *Id.* at 192.[9]

---

[9] In hindsight, one may be able to see the outlines of present First Amendment doctrine regarding discharge of public employees for reasons related to speech activity in a case decided the year before the LMRDA was enacted—*Speiser v. Randall*, 357 U.S. 513. But *Speiser* dealt not with discharge from public employment,

Given the general First Amendment doctrine applicable to public employees, it is not surprising that upon the particular issue implicated by this case—whether and under what circumstances a newly elected administration may discharge public employees because of their support for the opposition in a campaign and in order to make way for employees personally and politically loyal to the new regime—no court until 1972 had, so far as we are aware, ever held that public employees' constitutional rights are infringed by patronage discharges. *Illinois State Employees Union v. Lewis*, 473 F.2d 561 (7th Cir. 1972). This was true even *after* First Amendment doctrine had developed to the point that litigants had the temerity to raise such a question. *See Alomar v. Dwyer*, 447 F.2d 482, 483 (2nd Cir. 1971), *cert. denied*, 404 U.S. 1020 (1972); *American Federation of State, County and Municipal Employees v. Shapp*, 442 Pa. 527, 280 A.2d 375, 378 (1971); *Norton v. Blaylock*, 409 F.2d 772 (8th Cir. 1969), *affirming* 285 F. Supp. 659 (W.D. Art. 1968). And, it was not until 1976 that this Court, in *Elrod v. Burns*, 427 U.S. 347 (1976), *held*, 5-3, that there are circumstances in which the First Amendment protects against patronage discharges, even though, "[a]s the plurality opinion recognize[d], patronage practices of the sort under consideration here have a long history in America." 427 U.S. at 377 (Powell, J., concurring).[10]

---

but with "the denial of a tax exemption * * * [which] is frankly aimed at the suppression of dangerous ideas." *Id.* at 519. Only *after* 1959 did the Court begin to explore *Speiser*'s implications for public employees. *Shelton v. Tucker*, 364 U.S. 479; *Torcaso v. Watkins*, 367 U.S. 488; *Keyishian v. Board of Regents*, 385 U.S. 589; *Pickering, supra*, 391 U.S. at 568; *Elrod v. Burns*, 427 U.S. 347; *Branti v. Finkel, supra*. And, *Adler* was not expressly overruled until *Keyishian, supra*, 385 U.S. at 606.

[10] We are not suggesting, for we believe it to be incorrect, that a transportation to the union context of the constitutional test applicable to patronage discharges under *Elrod*, and *Branti v. Finkel, supra*, would result in upholding petitioners' claim in this

Thus, however direct the line from *Wieman v. Updegraff* and *Speiser v. Randall* to *Branti v. Finkel* may now appear in retrospect, it would have taken extraordinary prescience to have anticipated that progression of constitutional doctrine in 1959. The fair conclusion is that given the understanding of the First Amendment when the LMRDA was passed, Congress, if presented with

---

case. For, the ground for petitioners' discharge was not simply passive affiliation with an adverse political faction as it was in *Elrod* and *Branti*, but active campaigning in a bitter and hard-fought campaign. Compare *Branti, supra*, 445 U.S. at 520, n.14. And, business agents, whether or not they can be characterized as "confidential" or "policy-making," are expressly recognized in the LMRDA to be "key administrative personnel" (§ 3(g), 29 U.S.C. § 402(g)) who "occupy positions of trust in relation to such [labor] organization and its members as a group" (§ 501(a) 29 U.S.C. § 501(a)). *See* n.1, *supra*.

Under these circumstances, we would expect that "the hiring authority [the union] [could] demonstrate that [campaign support] is an appropriate requirement for the effective performance of the * * * office * * *" *Branti*, 445 U.S. at 518. It is probably the case that petitioners' "employment relationships with the [Union President] * * * [are] the kind of close working relationships for which it can persuasively be claimed that personal loyalty and confidence are necessary to their proper functioning" (*Pickering*, 391 U.S. at 570) so that general policies directives can be translated into implementation in the key daily affairs of the union. Also, with regard to negotiations particularly, known opposition to the incumbent administration could undermine a business agent's effectiveness even if he conscientiously sought to subordinate his own beliefs to the demands of the job. The employers' bargaining posture might take into account the possibility that the negotiator does not have the full confidence of the officer who must ultimately approve the contract.

For all these reasons, we would expect that, after trial, if not upon summary judgment, the defendants in this and similar cases could show that campaign opposition is as "appropriate" a basis for disqualification for a union business agent, entrusted with representing the union to the outside world, as it is for a gubernatorial aide who "writes speeches, explains [the governor's] views to the press, or communicates with the legislature." *Branti*, 445 U.S. at 518.

the problem, would have considered decidedly "new or novel" the notion that free speech rights of an appointed official, serving at the will of an elected officer, could be "infringed" by a post-election discharge based upon the appointee's expressed opposition to the officer's candidacy during an election campaign.[11] See also *Wood v. Denis*, *supra* (Stevens, J., concurring).

B. It is said, however, that because a central goal of the Act as a whole is "to have democratically responsive unions [by providing] * * * the opportunity to influence policy and leadership by free and periodic elections" (S. Rep. No. 187, 86th Cong., 1st Sess. (1959) at 7, I Leg. Hist. 403), appointed union staff must be protected from discharges for campaign activity in order to provide a potential for challenge to "entrenched" union leadership. *See* AUD Br. pp. 9-12. This argument, however, while correct in its premise—that Congress was concerned with assuring that a union's leadership reflects accurately the will of the members—is in error in its conclusion. It is sufficient that no such view of the role of appointed officials was generally current at the time or stated in the LMRDA debates. Moreover, as we now show when con-

---

[11] Whether this same conclusion applies with respect to statutory *elected* "officers" is another matter. Unlike the right to hold appointed union position, which is not expressly alluded to in the Act at all, the LMRDA, in Title IV not Title I, *does* give union members the rights "to be a candidate and to hold office" (§ 401(e), 29 U.S.C. § 481(e)). This means that in terms of the then governing constitutional "right-privilege" doctrine, holding elected union office may well have been considered a "right" rather than a "privilege." Also, by requiring that certain officials be elected (§ 3(n), 29 U.S.C. § 402(n), § 401, 29 U.S.C. § 481), and providing that members have "the right to vote for * * * candidates of [their] choice" (§ 401(e), 29 U.S.C. § 481(e); *see also* § 101(a)(1), 29 U.S.C. § 411(a)(1)), Congress indicated that any interest in political or policy conformity among LMRDA "officers" is entitled to little or no weight. Removal of elected LMRDA "officers" on the basis of campaign or policy positions might on these cases meet the pre-1959 "patently arbitrary or discriminatory" test of *Wieman v. Updegraff*. See also n.9, *supra*.

sidered in "the context of the whole Act" (*Richards v. United States, supra*, 369 U.S. at 11), it becomes clear that the statutory concept of responsive government[12] is furthered rather than impeded by permitting newly-elected officers a free hand in choosing staff such as business agents.

While stressing the importance of protecting the responsiveness of union governance, Congress at the same time made a conscious decision to define those officers who *must* be elected as including only "any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions * * * and any member of its executive functions * * * and any member of its executive board or similar governing body," (§ 3(n), 29 U.S.C. § 402(n), § 401, 29 U.S.C. § 481). This definition was expressly understood *not* to include many responsible union officials, including, *inter alia* "business agents" of the traditional variety. See II Leg. Hist. 1087-1096 (discussion of the definition of "officer" now contained, in slightly different form, in § 3(n) of the Act.) The effect of this decision was to permit business agents and similar officials to be elected, by designating them as "officers" in the union's constitution, or to permit said officials to be appointed by not so designating them. This compromise was reached even though it was asserted that much of the undemocratic conduct against which the bill was principally directed involved non-elected business agents. As Senator Mundt put it, "[A] great many of these problems involve the business agents." II Leg. Hist. 1091.

---

[12] Responsiveness of union officers to the will of the members was thought to be of particular importance with regard to two of the principal areas of petitioners' responsibilities, collective bargaining and processing grievances. "The Government which gives unions [exclusive] power [in these areas] has an obligation to insure that the officials who wield it are responsive to the desires of the men and women whom they represent." S. Rep. No. 187, *supra*, at 20, I. Leg. Hist. 416.

If petitioners' position were upheld, such appointed officials would be entitled to remain in office after an entirely new administration was elected, even if those officials were part and parcel of the administration the membership had disavowed in the election and even if the appointed officials' performance had been a central issue in the campaign and in the members' decision to repudiate the incumbent elected officers. Of course, unions could avoid this result by mandating in their constitutions that business agents be elected as well. But § 3(n) of the LMRDA was drafted precisely to preserve to union members the right to determine in their bylaws what their union's internal structure should be in this regard. There is no indication whatever that as petitioners and the *amici curiae* on their side argue this choice was limited to one between a permanent "civil service" at all levels of union staff and election of all officials with any degree of functional independence whatever. Rather, a third alternative—election by proxy of staff such as business agents, by giving newly-elected officers an entirely free hand in their selection—is an option that accords fully with both Congress' responsiveness concerns *and* the choice Congress left to unions regarding election of officers.

The legislative materials are inconsistent for another reason with an intent to limit the alternatives open to unions seeking to establish a responsive yet efficient governmental structure. Throughout the legislative process Congress evidenced an intention to *avoid* dictating to unions upon their internal structure, provided that essential democratic safeguards were assured. *See, e.g.*, S. Rep. No. 187, *supra*, at 7, I Leg. Hist. 403; cf. *Wirtz v. Glass Bottle Blowers Assoc.*, 389 U.S. 463, 440-71 & nn. 9 & 10. Of particular relevance in this regard is the Senate debate in 1958, when that body, but not the House, passed the "Kennedy-Ives" Bill, upon which most of Title IV of the LMRDA is based. *See* S. Rep. No. 187, *supra*, at 2, I Leg. Hist. 39. At that time, a detailed amendment designed to prescribe a means of removing

elected officers was proposed. 104 Cong. Rec. 11184 (June 14, 1958). In the debate on this proposal, Senator Ervin objected on the grounds that:

> [The] Senate [should not] write a constitutional bylaw which would be regained by all the unions in the country. [We should not] have the Senate write some of the minutiae as to how the constitutions and bylaws of unions would operate * * * [I]t would introduce chaos into the operations of unions. [104 Cong. Rec. 11190 (remarks of Sen. Ervin).]

On the basis of this view, Senator Ervin introduced a substitute amendment which required that there be *some* means of removing elected officers for cause, but did not specify the structure for accomplishing this end. *Id.* at 11205. This substitute, which passed, became the model for § 401(h) of the Act, 29 U.S.C. § 481(h).[14]

The rejection of the detailed recall provision was based on a recognition that "each of us, depending on his own personal philosophies, has a different concept of the democratic process * * * "[T]o tell people that they must have in their bylaws and their constitution * * * [is not] a democratic procedure." 104 Cong. Rec. 11197 (remarks of Sen. Pastore). Indeed, the direct recall proposal was objected specifically on the ground that it is "a mistake to

---

[14] Section 401(h) provides:

> Removal of officers guilty of serious misconduct
>
> (h) If the Secretary, upon application of any member of a local labor organization, finds after hearing in accordance with the Administrative Procedure Act that the constitution and bylaws of such labor organization do not provide an adequate procedure for the removal of an elected officer guilty of serious misconduct, such officer may be removed, for cause shown and after notice and hearing, by the members in good standing voting in a secret ballot conducted by the officers of such labor organization in accordance with its constitution and bylaws insofar as they are not inconsistent with the provisions of this subchapter.

ask for a higher degree of democracy in a trade union * * * than is practiced in our own Government." *Id.* at 11187 (remarks of Sen. Neuberger); see also *id.* at 11191 (remarks of Sen. Ervin). Against that background it is extraordinarily unlikely that in the related area of the tenure of appointed officials, Congress without so stating intended to prescribe the "concept"—contrary to the then prevailing political practice—that appointed officials are insulated from the election returns.

CONCLUSION

For the reasons stated above, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

J. ALBERT WOLL
815 15th Street, N.W.
Washington, D.C. 20005

MARSHA BERZON
177 Post Street
San Francisco, Calif. 94108

LAURENCE GOLD
815 16th Street, N.W.
Washington, D.C. 20006
202/637-5390
(Counsel of Record)

Office - Supreme Court, U.S.
FILED
NOV 23 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-2150

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

DONALD FINNEGAN, ET AL.,
Petitioners,

v.

HAROLD D. LEU, ET AL.,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

MOTION FOR LEAVE TO FILE A BRIEF AS *AMICI CURIAE* AND BRIEF OF THE ASSOCIATION FOR UNION DEMOCRACY, THE NORTHWEST OHIO CHAPTER OF TEAMSTERS FOR A DEMOCRATIC UNION, THE UNITED CONSTRUCTION WORKERS ASSOCIATION, AND THE INDEPENDENT SKILLED TRADES COUNCIL, AS *AMICI CURIAE*

ALAN HYDE
RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY SCHOOL OF LAW
15 Washington Street
Newark, New Jersey 07102
(201) 648-5463

PAUL ALAN LEVY
PUBLIC CITIZEN LITIGATION GROUP
Suite 700
2000 P Street, N.W.
Washington, D.C. 20036
(202) 785-3704
Attorneys for *Amici Curiae*

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. 80-2150

DONALD FINNEGAN, ET AL.,
Petitioners,

v.

HAROLD D. LEU, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

MOTION OF THE ASSOCIATION FOR UNION DEMOCRACY, THE NORTHWEST OHIO CHAPTER OF TEAMSTERS FOR A DEMOCRATIC UNION, THE UNITED CONSTRUCTION WORKERS ASSOCIATION, AND THE INDEPENDENT SKILLED TRADES COUNCIL, FOR LEAVE TO FILE A BRIEF AS *AMICI CURIAE*

Pursuant to Rule 42(3), the Association for Union Democracy, Inc., the Northwest Ohio Chapter of Teamsters for a Democratic Union, the United Construction Workers Association, and the Independent Skilled Trades Council respectfully move for leave to file the accompanying brief in this case as *amici*. Neither petitioner nor respondent has consented to the filing of this brief.

The Association for Union Democracy, Inc., is a non-profit corporation registered in the State of New York in 1969. It was granted tax-exempt status by the Internal Revenue Service in 1971 and subsequently classified as a non-private foundation. The aim of the Association, as stated in its certificate of incorporation, is to further democratic principles and practices in American labor organizations, both by encouraging union members to participate actively in the internal life of their unions, and by protecting the exercise of their democratic rights within their unions. The Association was founded in the realization that no other organization devotes itself primarily to this objective.

The Association does not take sides in internal union disputes over policy, program, or candidates. It does, however, propose that the rivalries and antagonisms which arise in the labor movement, as in other social institutions, be resolved through democratic procedures and the due process of law.

The sponsors of the Association include former leaders of major unions, religious leaders, members of union public review boards, lawyers, and prominent educators in labor studies and labor law. Despite divergent backgrounds, all share the view that the labor movement is one of the great forces which help sustain democracy in our national life and that, if it is to serve this purpose, union leaders must be responsive to their members, and unions must be democratic and just in their internal life.

In the past, the Association has provided legal and other support in numerous union controversies involving the political involvement, and at times discharge, of union officers. Its experience in the area has led it to an appreciation of the great variety of such situations, and the necessity that legal regulation of this staff relationship respect the range of variety involved.

Teamsters for a Democratic Union ("TDU") is a national organization of rank and file Teamsters, created

out of the merger of PROD and TDU. It is a grassroots organization, with chapters throughout the United States and Canada. It seeks to return the union to membership control by encouraging greater membership participation, fighting for better representation of the members and working to improve the leadership and structure of the union. TDU's Northwest Ohio chapter includes members of the several local unions within Teamsters Joint Council 44, including Teamsters Local 20.

The chapter has not taken a position on the union presidential races between Omar Brown, who appointed the plaintiff business agents, and Harold Leu, who fired them. The chapter includes Leu supporters, Brown supporters, supporters of Martin Smith, a third candidate, and supporters of none of these. *Amicus* recognizes the need of elected officers to be able to appoint to union positions persons who will carry out the policies the membership elected them to advance. *Amicus* also believes, however, that permitting the president of a local union to summarily discharge any union official who dares to disagree with him concentrates too much political control in one man's hands, and threatens the ability of the membership to exercise democratic control of their union.

The United Construction Workers Association ("UCWA") was created by minority construction workers in Seattle to assure the implementation of the "hometown plan" promulgated pursuant to Executive Order 11246. *See* W. Gould, BLACK WORKERS IN WHITE UNIONS, 345-351 (1977). Having secured minority access to the construction unions, the UCWA has turned to the difficult task of assuring fair union representation of minority workers. It has found, however, that minorities face particular problems in securing attention to their needs by established leaders, and that it is important to have minority members included in the leadership if real progress is to be made. The rule of *Emporium-Capwell Co. v. Western Addn. Cmnty. Org.*, 420 U.S. 50 (1975), se-

verely limits their ability to exert political influence on employers outside the structure of collective bargaining; yet when their representatives in the union staff press actively for minority interests, they may be, and have been, removed from office. *Amicus* wishes to file in this case to urge the Court to pay heed to the special needs of minority workers to have protection for the rights of their representatives in the inner circles of the union.

The Independent Skilled Trades Council is a national organization of rank-and-file members of the United Automobile, Aerospace, and Agricultural Implement Workers Union working at skilled trades. It has for several years campaigned on contractual issues and for democratic rights within the union, using both litigation and political organizing tactics. Many of its members have been appointed or elected to offices in the union; several of these officers have been brought up on charges or summarily removed from office for disseminating their dissenting views.

Amici are concerned that this Court's resolution of this case take place against a full appreciation of the situations in which the problem presents itself. We show in our brief that effective realization of the national interests, which Congress hoped to further in protecting union democracy, requires careful distinction between union-appointed positions which may be filled by union leaders on the basis of political loyalty to themselves, and appointees whose independent political activity must be protected in the interest of effective union democratic processes. We show further that in individual situations the political discharge of appointed staff may be part of a plan to chill the exercise of democratic rights by union members, and that the ultimate resolution of this case should not preclude federal courts in other individual cases from protecting union staff in such situations.

Amici take no position on whether, after trial, defendants or plaintiffs should prevail in this case. However,

the legal principle applied by the courts below—a *per se* rule that appointed union officers may never challenge a discharge from office based on their exercise of free speech rights—threatens the institutional sources of effective opposition in American unions. On the record before the Court, summary judgment was inappropriate under the legal principles that should have been applied. Accordingly, *amici* seek leave to file a brief at this time to urge that the case be remanded for trial.

For these reasons, we respectfully request that this motion for leave to file a brief as *amici curiae* be granted.

Respectfully submitted,

ALAN HYDE
RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY SCHOOL OF LAW
15 Washington Street
Newark, New Jersey 07102
(201) 648-5463

PAUL ALAN LEVY
PUBLIC CITIZEN LITIGATION GROUP
Suite 700
2000 P Street, N.W.
Washington, D.C. 20036
(202) 785-3704
Attorneys for *Amici Curiae*

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	viii
INTEREST OF *AMICI CURIAE*	1
STATUTORY PROVISIONS	1
INTRODUCTION AND SUMMARY OF ARGUMENT	2
ARGUMENT	5
I. THE PUBLIC INTEREST IN EFFECTIVE UNION DEMOCRATIC PROCESSES REQUIRES LEGAL PROTECTION OF SOME POLITICAL DISSIDENCE BY APPOINTED STAFF	5
A. The National Interest in Effective Union Internal Opposition Requires Protection for the Rights of Union Members Who Hold Appointive Positions	7
B. A Union's Interest in Effective Functioning Permits Limitations on an Officer's Expression Only Pursuant to Reasonable Rules Needed to Protect Organizational Interests and to Implement Its Legal or Contractual Obligations	13
II. COURTS SHOULD BE ALERT TO THE POSSIBILITY THAT DISCHARGES OF UNION STAFF ARE LIKELY TO INHIBIT MEMBERS' EXERCISE OF THEIR RIGHTS TO FREE SPEECH AND ASSEMBLY	20
III. THE APPROACH OF THE COURT OF APPEALS INADEQUATELY PROTECTS THE NATIONAL INTERESTS AT STAKE; CONSEQUENTLY THE GRANT OF SUMMARY JUDGMENT MUST BE REVERSED AND THE CASE REMANDED FOR A HEARING UNDER A STANDARD WHICH ADEQUATELY ACCOMMODATES THE COMPETING INTERESTS	22
CONCLUSION	24

TABLE OF AUTHORITIES

CASES — Page

Bise v. IBEW Local 1969, 618 F.2d 1299 (9th Cir. 1979), *cert. denied*, 449 U.S. 904 (1980) 15
Board of Regents v. Roth, 408 U.S. 564 (1972) 5
Boilermakers v. Hardeman, 401 U.S. 233 (1971) .. 15
Brandenburg v. Ohio, 395 U.S. 44 (1969) 16
Branti v. Finkel, 445 U.S. 507 (1980) 19
Cehaich v. UAW, 496 F. Supp. 912 (E.D. Mich. 1980) 18
Elrod v. Burns, 427 U.S. 347 (1976) 19
Emporium Capwell Co. v. Western Addn. Cmnty. Org., 420 U.S. 50 (1973) 12
George v. Bricklayers, 255 F. Supp. 239 (E.D. Wis. 1966) 17
Gooding v. Wilson, 405 U.S. 518 (1972) 15
Keubler v. Cleveland Litho. and Photo. Local 24-P, 473 F.2d 359 (6th Cir. 1973) 16
Kunz v. New York, 340 U.S. 290 (1951) 15
Maceira v. Pagan, 648 F.2d 8 (1st Cir. 1981) 15, 21
Machinists Grand Lodge v. King, 335 F.2d 340 (9th Cir.), *cert. denied*, 379 U.S. 920 (1964 6
Marshall v. Teamsters Local 20, 611 F.2d 645 (6th Cir. 1980) 10
Mt. Healthy Bd. of Educ. v. Doyle, 429 U.S. 274 (1977) 14
Musicians v. Wittstein, 379 U.S. 171 (1964) 12
Navarro v. Gannon, 385 F.2d 512 (2d Cir. 1967), *cert. denied*, 390 U.S. 989 (1968) 21
Navarro v. Leu, 469 F. Supp. 832 (N.D. Ohio 1979), *aff'd mem.*, 652 F.2d 58 (6th Cir. 1980) .. 20
Newman v. Communications Workers Local 1101, 597 F.2d 833 (2d Cir. 1979) 20
Pickering v. Bd. of Education, 391 U.S. 563 (1968) 19
Salzhandler v. Caputo, 316 F.2d 445 (2d Cir. 1963), *cert. denied*, 375 U.S. 946 (1964) 16, 18, 20
Schonfeld v. Penza, 477 F.2d 899 (2d Cir. 1973) 20, 21
Semancik v. United Mine Workers Dist. 5, 466 F.2d 144 (3d Cir. 1975) 15

TABLE OF AUTHORITIES—Continued

Page

Sewell v. Machinists Grand Lodge, 445 F.2d 545 (5th Cir. 1971), *cert. denied*, 404 U.S. 1024 (1972) 14
Stachan v. Weber, 535 F.2d 1202 (9th Cir. 1976) .. 15
Steelworkers Local 3489 v. Usery, 429 U.S. 305 (1977) 8, 9
Wirtz v. Laborers Local 125, 389 U.S. 477 (1968) .. 7
Wirtz v. Local 153, Glass Bottle Blowers Ass'n, 389 U.S. 463 (1968) 7, 13
Witte v. Myers, 343 F. Supp. 873 (W.D. Mich. 1971) 18
Yablonski v. UMW, 466 F.2d 424 (D.C. Cir. 1972), *cert. denied*, 412 U.S. 918 (1973) 20

LEGISLATIVE MATERIALS

Statutes

Hatch Act, 5 U.S.C. §§ 7321 *et seq.* 16, 17
Labor Management Reporting and Disclosure Act of 1959 (also cited as "LMRDA" and "Landrum-Griffin Act"), 29 U.S.C. § 401 *et seq.* ..... *passim*
§ 2(b), 29 U.S.C. § 401(b) 7
Bill of Rights of Members of Labor Organizations, Title I, 29 U.S.C. § 411 *et seq.* 2, 3, 5, 14
§ 101(a)(2), 29 U.S.C. § 411(a)(2) ..... *passim*
§ 101(a)(5), 29 U.S.C. § 411(a)(5) 6, 15
§ 102, 29 U.S.C. § 412 ..... 2, 5
§ 609, 29 U.S.C. § 529 5
National Labor Relations Act, as amended by Labor Management Relations Act, 29 U.S.C. § 151 *et seq.*
§ 9(a), 29 U.S.C. § 159(a) 15
§ 301, 29 U.S.C. § 185 15
United States Constitution, First Amendment 18

Legislative History

Conference Report on S. 1555 (H.R. No. 1147), 86th Cong., 1st Sess. (1959) 6
Congressional Record, Volume 105 (1959) 6, 14

TABLE OF AUTHORITIES—Continued

Page

NLRB, LEGISLATIVE HISTORY OF THE LMRDA (1959) 6, 14
S. Rep. No. 187, 86th Cong., 1st Sess. (1959) 6, 13

OTHER AUTHORITIES

Cook, UNION DEMOCRACY: PRACTICE AND IDEAL (1963) 10, 11
Dunau, *Some Comments on the Bill of Rights of Members of Labor Organizations*, 14 N.Y.U. CONF. ON LABOR 77 (1961) 6
Edelstein and Warner, COMPARATIVE UNION DEMOCRACY: ORGANISATION AND OPPOSITION IN BRITISH AND AMERICAN UNIONS (1979) 9, 10, 11
Herberg, *Bureaucracy and Democracy in Labor Unions*, 3 ANTIOCH REV. 405 (1943) 8
Herling, RIGHT TO CHALLENGE: PEOPLE AND POWER IN THE STEELWORKERS UNION (1972) 10, 11
James, *Union Democracy and the LMRDA: Autocracy and Insurgency in National Union Elections*, 13 HARV. CIV. RTS. CIV. LIB. L. REV. 247 (1978) 9, 10, 11
Lipset, *The Political Process in Trade Unions*, 216-242 in Galenson and Lipset, LABOR AND TRADE UNIONISM (1960) 8
McConnell, *Factionalism and Union Democracy*, 9 LAB. L. J. 635 (1958) 8
McLaughlin and Schoomaker, THE LANDRUM-GRIFFIN ACT AND UNION DEMOCRACY (1979) 10
Note, *Union Members' Free Speech Guarantee: Does It Protect Against Discharge from Office?*, 29 BUFF. L. REV. 169 (1980) 5
Proceedings of the 22d Convention of the International Brotherhood of Teamsters (1981) 11
Rosenberg, *Interpretive Problems of Title I of the Labor-Management Reporting and Disclosure Act*, 16 INDUS. & LAB. REL. REV. 405 (1963) 6
Rothbaum, THE GOVERNMENT OF THE OIL, CHEMICAL AND ATOMIC WORKERS UNION (1962) 11
Stieber, GOVERNING THE UAW (1962) 10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. 80-2150

DONALD FINNEGAN, ET AL.,
Petitioners,

v.

HAROLD D. LEU, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

BRIEF OF THE ASSOCIATION FOR UNION DEMOCRACY, THE NORTHWEST OHIO CHAPTER OF TEAMSTERS FOR A DEMOCRATIC UNION, THE UNITED CONSTRUCTION WORKERS ASSOCIATION, AND THE INDEPENDENT SKILLED TRADES COUNCIL, AS *AMICI CURIAE*

INTEREST OF *AMICI CURIAE*

The interest of *amici curiae* is set forth at pages ii to iv of the foregoing motion for leave to file a brief as *amici curiae.*

STATUTORY PROVISIONS

§ 101(a)(2) of the LMRDA, 29 U.S.C. § 411(a)(2), provides:

> **Freedom of speech and assembly.**—Every member of any labor organization shall have the right to

meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided*, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

§ 102 of the LMRDA, 29 U.S.C. § 412, provides:

Civil action for infringement of rights; jurisdiction

Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located.

INTRODUCTION AND SUMMARY OF ARGUMENT

The question which this Court granted certiorari to decide was narrowly phrased: whether the action of a victorious candidate for union office, removing his predecessor's appointees because of their support for the predecessor, is actionable under the Bill of Rights of Members of Labor Organizations.[1] This narrow question, however, presents but one aspect of a broader issue, whether the LMRDA protects appointed officials against

[1] Title I of the Labor-Management Reporting and Disclosure Act of 1959 (also cited as "LMRDA" or "Landrum-Griffin Act"), 73 Stat. 519, 29 U.S.C. § 411 *et seq.*

removal because of their exercise of Title I rights. Another issue lurks in the background—are elected officials protected against removal for such reasons?

Defendants have argued—and the courts below agreed—that unless union reformers are permitted to seal their victories by the wholesale discharge of the administrative apparatus that served the defeated incumbents, the reformers will be unable to take charge of the union, and the opportunity for effective membership control will be lost.

This appealing argument, however, is based on facts which are not typical in officer removal cases. For a variety of reasons, most union elections are not contested; those which are contested usually result in victory by the incumbents. Thus, officers are normally removed, not for supporting defeated incumbents, but rather for speaking out against the superiors who put them in office in the first place. In this case, the Court will promulgate an authoritative construction of the LMRDA which will govern both situations. And the effect of a rule, such as that applied by the courts below, that permits no cause of action for union officers dismissed because of their political expression, will be to eliminate the principal sources of effective criticism of union leadership and thus the chief hope for democratizing and reforming unions.

This brief begins by showing that the language of the statute forbids such a holding. There is no evidence that Congress intended a politicization of union staff. On the contrary, Congress plainly intended to foster union democracy, which cannot exist unless union leaders are legally restrained from converting all union employment into political patronage.

The daring Congressional strategy of fighting corruption in labor unions by encouraging internal union democracy requires that union opposition, to be effective,

not be denied access to what in particular cases may be the sole source of information, experience, and skill in running union affairs, namely the appointed staff. Unions lack the structural basis for a two-party system; thus, access to high office is obtained by promotion through a one-party hierarchy. History shows that only with some staff independence can union internal politics play the role which Congress envisaged, namely the constant monitoring and occasional challenging of incumbent leadership, in the interest of clean and democratic unionism. To hold otherwise is to condemn union opposition to marginality, incredibility, and ineffectuality, and thus deny the Congressional scheme of creating clean unions through legal protection of internal democracy.

Moreover, history reveals examples of political discharges of union staff as a way of chilling political opposition in the membership. To close the door of the federal courts to suits by such staff would deal a blow against Congressional purpose.

Under the *per se* rule announced by the Court of Appeals, no appointed staff member could obtain judicial scrutiny of his discharge. This rule would permit unions to require all employees of any kind to participate in internal union politics on behalf of incumbent leadership, at the risk of losing their jobs. Such a rule is plainly incompatible with Congressional purpose, and must be rejected.

Amici do not know whether plaintiffs or defendants will prevail at trial. The record, however, presents disputes about facts that are material under the principles of law that the lower courts should have applied. Accordingly, summary judgment was inappropriate; the decision of the Court of Appeals should be reversed and the case remanded for further proceedings.

ARGUMENT

I. THE PUBLIC INTEREST IN EFFECTIVE INTERNAL UNION DEMOCRATIC PROCESSES REQUIRES LEGAL PROTECTION OF SOME POLITICAL DISSIDENCE BY APPOINTED STAFF.

In this case, the fifteen business agents discharged by union president Leu for their support of his opponent were members of Local 20 of the International Brotherhood of Teamsters. As members, each had the right under § 101(a)(2) of the LMRDA "to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization . . . ." It is undisputed that exercising this right cost them their jobs. Although the business agents were not fined or expelled from the union, this discrimination based on their exercise of statutory rights operated as an infringement of those rights.[2] They were therefore entitled to bring an action under § 102 of the Act to secure appropriate relief.[3]

Not only does the language of the statute afford a clear protection against such infringements, but the legislative history fails to reveal any Congressional purpose to deny protection to union members who happen to be holding appointed staff positions. To the contrary, remarks in the Congressional debates reveal a consistent assumption that union officials would be among the potential plaintiffs under the Bill of Rights, an assumption

---

[2] The discharge cannot be justified on the theory that selection for a union position is a "privilege" rather than a "right." *See Board of Regents v. Roth*, 408 U.S. 564, 571 (1972).

[3] Because § 102 provides a cause of action for Title I complaints, it is unnecessary to decide whether § 609 of the Act creates an alternative basis for a suit. *See* Note, *Union Members' Free Speech Guarantee: Does It Protect Against Discharge From Office?*, 29 BUFF. L. REV. 169, 177 (1980).

shared equally by those who supported this result[4] as well as those who sought, in specific ways not involved in this case, to limit it.[5]

However, neither the "plain meaning" of the statute, nor the scattered assumptions of individual members of Congress, provides a resolution of the question presented. Rather, the rights of appointed union officers must be determined by examining the purposes Congress hoped to achieve through the LMRDA, and deciding what treatment of the rights of union staff will best achieve the

---

[4] 105 Congressional Record 4813 (daily ed., April 22, 1959), 2 NLRB, LEGISLATIVE HISTORY OF THE LMRDA 1105 (1959) (cited as NLRB, LEG. HIST.) (account by Sen. Mundt of Roy Underwood); 105 Cong. Rec. 5823 (daily ed., April 22, 1959), 2 NLRB, LEG. HIST. 1115 (letter from Professor Godfrey Schmidt to Sen. Kennedy, as read by Sen. Goldwater).

[5] 105 Cong. Rec. 14495 (daily ed., Aug. 13, 1959), 2 NLRB, LEG. HIST. 1667 (Rep. McCormack, discussion of union officers as plaintiffs under LMRDA § 101(a)(5)). This concern with union officers as potential plaintiffs under this section resulted in a limiting legislative history. Conference Report on S. 1555 (H.R. No. 1147), 86th Cong., 1st Sess., at 31 (1959); 1 NLRB, LEG. HIST. 935.

The instant case presents no issue of the applicability of the "due process" provisions of Section 101(a)(5), 29 U.S.C. § 411(a)(5), to the removal of the petitioner business agents from office. Some lower courts have held that the section has no applicability to removal from office, *e.g.*, *Machinists Grand Lodge v. King*, 335 F.2d 340, 341-343 (9th Cir.), *cert. denied*, 379 U.S. 920 (1964). There is a substantial argument that the Conference Report represents a Congressional determination not to require standards of due process for a *suspension* from union office, on the assumption that a permanent *removal* would follow, and that the permanent removal *would* take place under the safeguards of Section 101(a)(5). See Rosenberg, *Interpretive Problems of Title I of the Labor-Management Reporting and Disclosure Act*, 16 INDUS. & LAB. REL. REV. 405, 427 (1963); Dunau, *Some Comments on the Bill of Rights of Members of Labor Organizations*, 14 N.Y.U. CONF. ON LABOR 77, 94 (1961).

In this case, the discharged business agents did not challenge the procedural aspects of their removal from office; consequently the issue need not be reached.

Congressional purpose. For although the text of the LMRDA and its legislative history are frequently (and famously) not easy to interpret, *see, e.g., Wirtz v. Local 153, Glass Bottle Blowers Ass'n*, 389 U.S. 463, 468 (1968), the interests which Congress hoped to accommodate assuredly are. The Bill of Rights seeks to accommodate the national interest in the control of union corruption through the enhancement of effective internal democratic processes, particularly by limiting the ability of entrenched union leaders to build political machines that perpetuate their rule, and the unions' interest in effective functioning as institutions and in fidelity to their legal and contractual responsibilities.

A. The National Interest In Effective Union Internal Opposition Requires Protection For The Rights Of Union Members Who Hold Appointive Positions.

The rights granted union members in the Bill of Rights are not a sort of subsidy, granted in a spirit of benevolence. Nor are they designed to achieve some abstract balance of power between union members and leaders.

The rights granted union members in the Bill of Rights are an element of the Congressional strategy against "breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct . . . ." LMRA § 2(b), 29 U.S.C. § 401(b). *Cf. Wirtz v. Laborers Local 125*, 389 U.S. 477 (1968). Their construction must be as broad as is necessary to achieve this Congressional purpose.

The disclosures of corruption, racketeering, and abuse of power in some portions of American trade union movement provided ample basis for Congressional enactment of the LMRDA. Primary reliance was not placed on a massive increase in criminal sanctions nor ongoing administration or supervision by a federal regulatory

agency. Rather, Congress boldly decided to place principal responsibility on union members themselves to obtain control of their unions through democratic processes. Union members were given federally guaranteed rights to participate in union affairs, elect officers, and organize opposition. The members were given the tools to clean up their unions: Congress hoped that the threat of effective rank-and-file objections, or electoral opposition, would suffice to keep union leaders honest, responsive to the membership, and worthy of their trust.

In adopting this daring strategy, however, Congress faced a serious problem. For, as this Court observed in *Steelworkers Local 3489 v. Usery*, 429 U.S. 305, 310-311 and n. 7 (1977):

> In the absence of a permanent "opposition party" within the union, opposition to the incumbent leadership is likely to emerge in response to particular issues at different times . . .. The Secretary suggests that in most unions there is no such organized opposition, and that the pattern described in the text is indeed typical.

This creates a serious paradox for Congressional policy. Although clean, responsive unions might result from the presence or threat of electoral opposition, such opposition is lacking on a permanent or regular basis.[6] And

---

[6] The structural reasons for this absence include large size and centralization of decision-making; the incumbents' control of means of acquiring information and communication of views; the lack of an independent judiciary and effective legislative branch which could be an institutionalized forum for debate; the lack of opportunity to gain the experience or specialized skills needed for union leadership, except as part of the incumbent administration; and the traditional union suspicion of factionalism, viewing it as a form of dual unionism. *See generally*, Lipset, *The Political Process in Trade Unions* 216-242, in Galenson and Lipset, LABOR AND TRADE UNIONISM (1960); McConnell, *Factionalism and Union Democracy*, 9 Lab. L.J. 635 (1958); Herberg, *Bureaucracy and Democracy in Labor Unions*, 3 ANTIOCH REV. 405 (1943).

although sporadic outbursts of disaffection of the sort described in *Local 3489* might suffice to keep some local leaders responsive, they could hardly perform that function for national union leaders, or even leaders in a local the size of Teamsters Local 20 with a membership of approximately 12,500.

The paradox is real, but not insoluble. In order to vindicate the Congressional policy of fighting union corruption through internal democracy, the structural sources of democratic opposition must be protected wherever it appears, in the interest of keeping leadership responsive. A most important source in many cases is among appointed union-member staff.

Studies of contested union elections are unanimous in their recognition of the crucial role of full-time union staff. "[T]he defeat of a top officer is, with few exceptions, also accompanied by a political split among important full-time officials, one of whom usually becomes the standard bearer for the opposition and the candidate who replaces the incumbent." Edelstein and Warner, COMPARATIVE UNION DEMOCRACY: ORGANISATION AND OPPOSITION IN BRITISH AND AMERICAN UNIONS 319 (1976). "[A]n elite challenger can often marshal sufficient union resources to offset the incumbent's elite support. The non-elite candidate, on the other hand, faces not only an opponent, but the resources of the union itself." James, *Union Democracy and the LMRDA: Autocracy and Insurgency in National Union Elections*, 13 HARV. CIV. RTS. CIV. L. REV. 247, 265 (1978). "The benefits of elite support increase with the size of the electorate and the scale of campaigning, until at the national level non-elite disabilities are all but crippling. There the massive imbalance in resources in a non-elite election challenge ensures that such challenges will be rare and ineffectual." *Id.* 266. "While both sides [in the 1965 contest for president of the United Steelworkers of America] clearly understood that their attention had

to be placed on the internal organization of the union, they were equally convinced of the need for an *auxiliary* public-relations apparatus to push their candidacies." Herling, RIGHT TO CHALLENGE: PEOPLE AND POWER IN THE STEELWORKERS UNION 143 (1972) (emphasis supplied); *see also id.* 138 n.* ("The staff representatives could become the muscle of organization. . . .") *et seq.*[7]

It is not hard to see why this should be so. In this one-party system of the unions, the only way for concerned members to acquire information on union affairs, skills at running meetings or committees, or influence of any kind, is to move up through the existing hierarchy, frequently stopping in a staff position. This pattern is facilitated by the almost universal union practice of appointing staff from their own rank-and-file members. *See, e.g.*, Stieber, GOVERNING THE UAW 93 (1962); Herling, *supra*, at 120 (United Steelworkers); Cook, UNION DEMOCRACY: PRACTICE AND IDEAL 139 (1963); Edelstein and Warner, *supra*, at 15. In every defeat of an incumbent national union president, staff support for the challenge has been critical. *See, e.g.*, Herling, *supra*; Edelstein and Warner, *supra*, at 320-329 (International Union of Electrical Workers).

Indeed, for most successful national union candidates, staff support can be assumed. Most unions elect national officers at national conventions, McLaughlin and Schoomaker, THE LANDRUM-GRIFFIN ACT AND UNION DEMOCRACY 24-26 (1979); James, *supra*, at 261 n. 49

[7] Similarly, in Local 20 there was a long period of rule by a political machine until 1974 when two members of the official family who held appointed jobs, Leu and Brown, ran against each other for the right to succeed to the position of a retiring president. Leu's election was overturned and Brown won in the rerun in 1975. Leu then used employer contributions to win the next regular election in 1977, *see Marshall v. Teamsters Local 20*, 611 F.2d 645 (6th Cir. 1980), although the remainder of Brown's slate was reelected. Two of these individuals were among the business agents fired by Leu. After the 1977 election was overturned, Leu won the rerun.

(citing sources); while the proportions vary among unions, it is customary for appointed staff to comprise a fairly high percentage of the delegates at these electoral conventions. James, *supra*, at 262 n. 52; Edelstein and Warner, *supra*, at 104; Herling, *supra*, at 316-317, 360-361 (1968 United Steelworkers Convention; four out of five staff representatives served as convention delegates), 401.[8] Even where business agents are originally elected by the membership, either to their staff positions or as delegates, they quickly identify their loyalties with the incumbent administration. Cook, *supra*, at 196-198; Edelstein and Warner, *supra*, at 101.[9] Thus, in many unions, a rule that staff positions are conditioned on political support of incumbent leadership is the equivalent of a rule that there can be no democratic opponent to the incumbents, for where the convention is dominated by staff, and the staff must be loyal to the incumbents, the right to run for office is a hollow joke.

Yet even where the staff does not actually participate in the election of officers, its ability to assist an opposition candidate is, in many cases, an essential ingredient of the opposition's credibility. There simply may be no other source of information on union finances, issues, or inner workings. To permit union leadership to deny these resources to all challengers is to doom democratic

---

[8] The rule of the Oil, Chemical, and Atomic Workers which makes international officers and appointed staff ineligible to be convention delegates, Rothbaum, THE GOVERNMENT OF THE OIL, CHEMICAL AND ATOMIC WORKERS UNION, 54-56 (1962), is thought to be unique in American union practice. *Cf. id.*, vii-viii.

[9] In the union involved in this case, even this possibility has become theoretical for the time being. At its last convention, the International Brotherhood of Teamsters adopted a policy under which locals currently appointing their staff would be precluded from switching to elected staff. Proceedings of the 22d Convention, International Brotherhood of Teamsters, June 3, 1981, at 132-35. Thus, for the foreseeable future in this union, support for insurgent candidates must come, if at all, from appointed staff.

opposition to marginality and frustrate its ability to perform the role Congress assigned it.[10]

Protection for officers' exercise of free speech is particularly crucial for minority groups within the union, such as members of *amici* United Construction Workers Association and Independent Skilled Trades Council, whose interests may sometimes be in conflict with those of the majority of union members. This Court's decision in *Emporium-Capwell Co. v. Western Addn. Cmnty. Org.*, 420 U.S. 50 (1975), severely limits their ability to exert political influence outside the union structure and encourages them to seek vindication of their rights by working in coalition with other workers. But many of the real decisions are made, not by the membership in referenda or mass meetings, but by officers at headquarters. Indeed, as the Court recognized in *Musicians v. Wittstein*, 379 U.S. 171, 182 (1964), the union democracy which Congress sought to foster is primarily based on representation, not mass participation. A representative democracy, to be effective, requires that pluralism at the membership level be reflected at the leadership level as well, for it is very often there that coalitions among interest groups must be formed. *Amici* have found, unfortunately, that when members who have gained access, by election or by appointment, to union positions insist on pressing their constituents' views, these officials are often removed from office for their pains.

---

[10] There remains in any individual case the possibility that staff wanting to assist an insurgent candidate might resign their staff positions and take their accumulated knowledge over to the other side. Whether this possibility is realistic depends sharply on the availability in any particular case of jobs in the trade to which staff might transfer while retaining union membership, as well as any contractual right they might have to reclaim jobs they left when first taking office. In this case, many of plaintiffs were unable to find work because of endemic unemployment in the trucking industry, and thus could not even retain their union membership because they were not "working at the trade."

Protection of officers' rights is thus necessary to maintain pluralism at the level at which it counts—the union headquarters—in order to promote the Congressional goals of fostering effective representation of all interests within the union, and of securing effective membership control of unions. We turn now to the limitations on officer speech that are appropriate in light of unions' countervailing interests.

B. A Union's Interest in Effective Functioning Permits Limitations on an Officer's Expression Only Pursuant to Reasonable Rules Needed to Protect Organizational Interests and to Implement Its Legal or Contractual Obligations.

Unions, too, have interests at stake in the conduct of its appointed staff. Congress recognized the importance of these interests and enacted a proviso to § 101(a)(2) to protect them. The proviso does not say that union leaders may use their official powers to eliminate effective criticism; rather it permits the enforcement of

> reasonable rules as to the responsibility of every member toward the organization as an institution and to his responsibility to refrain from conduct that would interfere with its performance of its legal or contractual obligations.
>
> 29 U.S.C. § 411(a)(2).

It is important to be precise about the union interest which Congress actually recognized, since there has been some tendency in the lower courts to overstate the unions' legitimate interests.[11] For example, some courts, in sug-

---

[11] Courts have frequently quoted S. Rep. No. 187, 86th Cong., 1st Sess. 7 (1959) to the effect that judicial intrusion into internal union affairs should be minimized. *E.g., Wirtz v. Local 153, Glass Bottle Blowers Ass'n*, 389 U.S. 463, 471 n. 10. This is odd in light of this Court's express warning in the very same case, *id.* at 468 and n. 6, against reliance on isolated fragments of the LMRDA's legislative history. More importantly, however, the quoted language was offered as a justification for omitting any Bill of Rights for union members from S. 1555. This philosophy was repudiated by

gesting that the Bill of Rights of Members of Labor Organizations offers little or no protection to the officer discharged for political differences with the leadership, have analogized the union to a corporation or business enterprise.[12] The analogy is a poor one. There has been no Congressional determination that any public interest requires the protection of the right of corporate managers or workers to organize assemblies or to challenge corporate leaders in fair, federally regulated elections. Just this determination has been made in the case of labor unions.

This does not mean, of course, that appointed union staff are frozen into office and cannot be fired for cause. Rather, once it is shown that the firing was based, at least in part, on the appointee's political views or expression, the union should be entitled to show that the appointee would have been removed, for valid reasons, even absent the political motivation. This is similar to the rule that is applied to public employees. *Mt. Healthy Bd. of Educ. v. Doyle*, 429 U.S. 274 (1977). Only if the union cannot rebut the prima facie case of political motivation would the officer be entitled to reinstatement.

The union may also prevail by establishing that the officer's position was inconsistent with the particular kind of expression at issue. Of course, no national interest demands that unions tolerate staff obstruction of elected officials which renders the union incapable of performing its statutory obligation of fair representation of employ-

---

Congress when it adopted, on the floor, the McClellan Amendment, 105 Cong. Rec. 6476 (daily ed., April 22, 1959), 2 NLRB, LEG. HIST. 1119, which, as further amended, 105 Cong. Rec. 6729 (daily ed., April 25, 1959), 2 NLRB, LEG. HIST. 1239, became the Bill of Rights of Members of Labor Organizations.

[12] *E.g., Sewell v. Machinist Grand Lodge*, 445 F.2d 545, 551 (5th Cir. 1971), *cert. denied*, 404 U.S. 1024 (1972) ("All employees, whether they work for a union or a large commercial company, may be required at times to subordinate personal expression to the responsibilities of their employment.").

ees, National Labor Relations Act, § 9(a), 29 U.S.C. § 159(a), or contractual obligations to employers or others. Labor-Management Relations Act, § 301, 29 U.S.C. § 185. The measure of this defense, however, is the specific interests identified in the proviso to § 101 (a)(2). Several considerations are involved in the application of this proviso.

1. The proviso requires that there be a "reasonable rule" which was violated. *E.g., Maceira v. Pagan*, 648 F.2d 8, 15 (1st Cir. 1981). Restricting political freedom is not a club to be brought out at convenient moments when a particular member has taken an unpopular stand. There must be some intra-institutional expectation that all members similarly situated, not just the particular officer, have foresworn the conduct in question.[13] Moreover, the existence of an established rule provides some indication that the union membership, and not just the firing authority, favored the restriction on expression.

2. Merely theoretical threats to the union as an institution or to its legal or contractual obligations will not suffice to warrant infringements of free speech rights. Rather, there must be a serious and immediate threat to the union's interests. *E.g., Stachan v. Weber*, 535 F.2d

---

[13] The "due process" provisions of the Bill of Rights of Union Members, LMRDA, § 101(a)(5), 29 U.S.C. § 411(a)(5), normally permit, as a procedural matter, discipline on the basis of unwriten rules, *Boilermakers v. Hardeman*, 401 U.S. 233, 243-45 (1971). Nevertheless, punishment of speech under unwritten, vague or otherwise unreasonable rules may be *substantively* improper under the "free speech" provisions of LMRDA, § 101(a)(2), although proper under § 101(a)(5). *See, e.g., Bise v. IBEW Local 1969*, 618 F.2d 1299, 1304-1305 n.5 (9th Cir. 1979), *cert. denied*, 449 U.S. 904 (1980); *Semancik v. United Mine Workers Dist. 5*, 466 F.2d 144, 153 (3d Cir. 1972). This is analogous to the well-known principle of constitutional law that, because political expression is easily chilled, the regulation of speech must be accomplished through formal standards which eliminate official discretion and give clear notice of what is prohibited. *Gooding v. Wilson*, 405 U.S. 518 (1972); *Kunz v. New York*, 340 U.S. 290 (1951).

1202 (9th Cir. 1976); *Keubler v. Cleveland Litho and Photo, Local 24-P*, 473 F.2d 359 (6th Cir. 1973). This is a variation on the standard rule under the First Amendment that infringement of free speech is unlawful absent an imminent threat of a likely harm that the government may legitimately prevent. *Brandenburg v. Ohio*, 395 U.S. 444 (1969). As Chief Judge Lumbard said in one of the first officer removal cases,

> Congress . . . decided that the desirability of protecting the democratic process within the unions outweighs any possible weakening of unions in their dealings with employers which may result from the freer expression of opinions within the unions.
>
> *Sanzhandler v. Caputo*, 316 F.2d 445, 451 (2d Cir. 1963), *cert. denied*, 375 U.S. 946 (1964).

3. In order to be valid under the proviso, a rule must protect, not the interests of individual officers who happen to be in a position to exercise powers of removal, but rather the interest of the organization as an institution and its ability to fulfill legal and contractual obligations. Thus, a rule that is so framed as to be applied without discrimination between those who campaign for the winners in an election and those who oppose them, can more readily be justified than a rule that is limited to those who back losers.

For example, unions have the power to eliminate this entire problem by insisting rigorously that staff stay out of union elections. Unions could adopt strict rules under which endorsing or contributing to any candidate or participation in any campaign for union office would be grounds for discharge from an appointed staff position. Staff wishing to campaign would have to resign or take a leave of absence for the duration of the campaign. Under such internal union "Hatch Acts," [14] the resources, expertise, energies, and wallets of staff would be open neither to incumbents nor insurgents. This would be a

---

[14] 5 U.S.C. §§ 7321 *et seq.*

major step toward creating effective internal democracy and would truly further the Congressional plan.[15]

For this reason the Court should be chary in declaring any sweeping "right" to electoral participation by staff. The decision in the instant case should not render such a union "Hatch Act" legally impermissible.

It is difficult to suppose that the 1959 Congress would for a moment have endorsed such a result. On the other hand, it cannot be maintained that Congress in 1959 *required* the adoption of internal union "Hatch Acts." The Court's resolution of this case must therefore accommodate the national interest in permitting credible elections in unions, while not foreclosing an individual union's decision to remove its staff from electoral politics.

4. Finally, the union's burden of justification is substantially higher where it depends on whether the appointee supported or opposed the officer who removed him. It must be shown that the appointee's position is such that the *organization's* institutional interests or legal obligations are seriously threatened by having the position occupied by a person who made the kind of statement involved.[16]

---

[15] Unfortunately, *amici* are aware of no such union "Hatch Acts." Rather, the expectation appears universal, even in relatively clean and democratic unions, that staff will be available to assist the electoral campaign—of incumbent leaders. Unions thus recognize the political role of staff, but insist that this political freedom be exercised in only one direction—on behalf of the incumbents. This is not a "Hatch Act" but a hatchet act. It stands the LMRDA on its head by creating a vast pool of campaign resources available only to incumbent union officials.

[16] The fact that this case concerns a dismissal based on expression in a union election should not obscure the fact that officers have frequently been removed for statements of other kinds. *E.g., George v. Bricklayers*, 255 F. Supp. 239 (E.D. Wis. 1966) (removal for

Thus, valid restrictions on protected expression will be limited to top-level appointees who must be trusted to act with a high degree of independence and discretion. For example, in unions which elect a part-time executive board, which then appoints a full-time executive secretary or business manager, the full-time appointee becomes so powerful, and so able to influence policy despite the formal role of the executive board, that policy disagreements are an entirely sound reason for discharge. The justification for exacting conformity of political views decreases as one moves down the political ladder of the union hierarchy. For example, there may be less reason to restrict business agents' expression where, as in Local 20, the union president is a full-time officer who hires a full-time administrative assistant to help him supervise and control the business agents. And it is highly unlikely that personal loyalty to and political support of incumbents will be necessary to the job performance of teachers in an apprenticeship training program, members of a fair employment practices committee, or job stewards.

Sadly, no simple formula can describe for all cases the union appointees for whom personal political loyalty may be made a job requirement. Unions differ in internal organization; labels such as "secretary-treasurer," "business agent," or "job steward" lack uniform meaning. It will thus be necessary to determine the requisite extent of protection on a case-by-case basis.

The First Amendment provides a helpful analogy in determining what limits on free speech elected officials

---

proposing constitutional amendments); *Witte v. Myers*, 343 F. Supp. 873 (W.D. Mich. 1971) (opposing apprenticeship program); *Cehaich v. UAW*, 496 F. Supp. 912 (E.D. Mich. 1980) (urging defeat of proposed contract); *Salzhandler v. Caputo*, 316 F.2d 445, 451 (2d Cir. 1963), *cert. denied*, 375 U.S. 946 (1964) (denunciation of embezzlement of union funds).

may appropriately demand of appointed employees. A public employee who disagrees with an elected official's policy may be in a good position to block the effectuation of programs which enjoy a popular mandate; mere expression of disagreement or criticism is not, however, sufficient to warrant dismissal. *Pickering v. Board of Education*, 391 U.S. 563 (1968). Arguments that elected officials need to be able to fire supporters of their electoral opponents in order to be able to function effectively have been rejected. *Elrod v. Burns*, 427 U.S. 347 (1976). Rather, such limitations may only be imposed on employees where "the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved." *Branti v. Finkel*, 445 U.S. 507, 518 (1980).[17]

In summary, then, Congress' objectives of controlling union corruption and assuring effective membership control of unions requires statutory protection for the rights of union appointees to express their views in support of or opposition to elected leaders. Although the unions' interest in effective functioning and in fulfilling their legal and contractual obligations permits the imposition of some restrictions on the political activities of some union appointees, removal from office is appropriate only when the union can show that the particular expression, coming from the particular appointee, was forbidden by a reasonable union rule and posed a serious threat to legitimate union interests under the proviso to § 101 (a) (2).

---

[17] The First Amendment analogy should not obscure the specific problem presented. In particular, the one-party character of most union governments requires greater protection for dissident staff members than would be extended to public employees. The test, drawn from the proviso, must be whether treating the position as a patronage job is required by union's interests as an organization or its legal or contractual obligations.

II. COURTS SHOULD BE ALERT TO THE POSSIBILITY THAT DISCHARGES OF UNION STAFF ARE LIKELY TO INHIBIT MEMBERS' EXERCISE OF THEIR RIGHTS TO FREE SPEECH AND ASSEMBLY.

In its opinion granting summary judgment to the defendant officers in this case, the district court observed: "The evidence does not indicate that the firings were an attempt to stifle dissent in the union." *Navarro v. Leu*, 469 F. Supp. 832, 835 (N.D. Ohio 1979), *aff'd mem.*, 652 F.2d 58 (6th Cir. 1980). The reservation was well-advised. Several cases, particularly in the Second Circuit, have recognized the need to protect officers against removal which either is intended to inhibit dissent by rank-and-file members, or has that effect. *Newman v. Communication Workers Local 1101*, 597 F.2d 833 (2d Cir. 1979). *Amici* urge that, in deciding this case, the Court should not close the judicial doors to the allegation that, in any particular case, the discharge of particular staff infringes the rights of rank-and-file members.

It is by no means uncommon for the ax of repression to fall first on officers. For example, when Joseph Yablonski announced his candidacy in the 1969 election for President of the United Mine Workers, he was at the time Acting Director of the Labor's Non-Partisan League, the union's independently-controlled political affiliate. He was quickly removed from his job and exiled to the union's Pittsburgh district. *See Yablonski v. United Mine Workers*, 466 F.2d 424, 426 (D.C. Cir. 1972). On at least two occasions in the bitter history of the attempt to clean up District Council 9 of the International Brotherhood of Painters, a reformer elected as financial officer was removed from office by the Trial Board for what was later found to be protected speech, and declared ineligible for office. On both occasions the courts restored the officer to office. *Schonfeld v. Penza*, 477 F.2d 899 (2d Cir. 1973); *Salzhandler v. Caputo*,

supra. In the *Schonfeld* case, the court observed, 477 F.2d at 903-904, that the allegations had raised the question of "whether the sanctions on Schonfeld . . . impede or infringe upon the free speech or association rights of union *members* . . ." and noted that "federal courts need not necessarily wait to intervene until some sanction is directly imposed on union dissidents, for once suppressed 'the democratic spirit' within a union 'may not soon be revived,'" *quoting from Navarro v. Gannon*, 385 F.2d 512, 520 (2d Cir. 1967), *cert. denied*, 390 U.S. 989 (1968).

The test suggested in the previous section might well have protected union democracy in all these cases. In none of them was the officer dismissed under a "rule," reasonable or otherwise. In none did the union require that the demand for political support from officers in each position advance the union's performance of its legal obligations, or any other legitimate union interest. Indeed, Schonfeld and Salzhandler were each elected officers whose right of free speech should be well-nigh absolute.[18]

Nevertheless, there will be cases of reprisal discharges of appointed union staff, serving in positions for which a previously adopted union "reasonable rule" might normally make personal loyalty to the union president part of the job. In some individual cases, the discharge will

---

[18] This case involves appointed staff, and the grant of *certiorari* spoke in terms only of appointed staff. It is therefore unnecessary to reach the question of whether, and under what circumstances, unions may adopt rules restricting the free speech or political participation rights of elected officials. *See, e.g., Maceira v. Pagan*, 648 F.2d 8 (1st Cir. 1981). Elected officials normally represent the interests of their constituents to labor or employer bodies, and therefore free speech is normally an inherent part of the understanding of the job. *Amici* find it difficult to imagine any circumstances under which removal of elected officials, solely for expression of views or other exercise of the rights of speech or assembly, would be proper; however, that question is not presented here.

be one of several actions rendering ineffectual the internal political dissent which Congress charged with the national task of creating honest unionism. The Court's resolution of the question presented in this case should be careful not to foreclose the possibility that federal courts might find, in other cases in which the issue is presented, that an officer's discharge was an infringement of the *members'* freedom of speech and assembly.

III. THE APPROACH OF THE COURT OF APPEALS INADEQUATELY PROTECTS THE NATIONAL INTERESTS AT STAKE; CONSEQUENTLY THE GRANT OF SUMMARY JUDGMENT MUST BE REVERSED AND THE CASE REMANDED FOR A HEARING UNDER A STANDARD WHICH ADEQUATELY ACCOMMODATES THE COMPETING INTERESTS.

From the foregoing analysis it follows that the judgment below must be reversed. The *per se* rule applied below, under which a union president could condition all union employment on personal support of him, creates a powerful weapon for the enforcement of conformity throughout a union and inadequately protects the national interest in permitting internal union democracy to flourish.

Nor is the record below adequate to support summary judgment under the standard that should have been applied. There is no hint that the union acted pursuant to a "rule" of any kind. Nor does the record show, aside from Leu's own stated belief that he needed "loyal" employees to carry out his programs, that having business agents who supported his predecessor posed a substantial threat to Leu's ability to lead the local and to meet its legal obligations. The discharges were not based on a neutral policy forbidding employees to participate in electoral campaigns, and the record provides only the barest details about the business agents' duties, and noth-

ing about a consequent inconsistency—or consistency—between their positions and their political expressions.

On remand, the district court should conduct an evidentiary hearing designed to resolve questions such as the following:

1. Were the discharges based solely on the business agents' campaign activities? If Leu had other reasons such as doubts about the agents' competence, would he have fired them in the absence of their protected activity?

2. Did the union have a rule requiring union employees to campaign for the winner in an election? Was it the expectation of the agents, or of the membership generally, that political loyalty to a defeated candidate could properly be grounds for discharge?

3. Did the business agents' support for Omar Brown in the 1977 election pose a serious threat to Local 20's institutional interests or its ability to fulfill its legal and contractual obligations? Or was the principal danger posed to Harold Leu's ability to persuade the union's executive board, all of whose other members had been elected on Brown's slate, to adopt and implement Leu's program?

4. Was Leu's complaint that the business agents had campaigned at all, or simply that they had not campaigned for him?

5. Do business agents perform such a sensitive job, and do they enjoy so much discretion and functional independence, that the elected officers could not effectively implement their policy decisions without having agents who agreed with their program in every respect? What is the business agents' role on the Local 20 Steward's Council? Do they dominate it, or are they only a few members of a large body? Are they expected in that role simply to represent the views of the elected leaders; or the independent interests of staff in their own right;

or the views of the portion of the membership that each serves individually? And how important a part of the agents' job is their service on the Council? [19]

IV. CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals should be reversed, and the case remanded to the district court for trial on the merits.

Respectfully submitted,

ALAN HYDE
RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY SCHOOL OF LAW
15 Washington Street
Newark, New Jersey 07102
(201) 648-5463

PAUL ALAN LEVY
PUBLIC CITIZEN LITIGATION GROUP
Suite 700
2000 P Street, N.W.
Washington, D.C. 20036
(202) 785-3704
Attorneys for *Amici Curiae*

[19] In other cases there might be additional questions concerning the likely effect of the discharges on free speech and assembly among union members. It appears that the affidavits in the present case do not raise the issue here.

MOTION FILED
JAN 6 1982

No. 80-2150

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

DONALD FINNEGAN, *et al.*,
Petitioners,

—versus—

HAROLD D. LEU, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* AND BRIEF OF NATIONAL LABOR LAW CENTER OF THE NATIONAL LAWYERS GUILD AS *AMICUS CURIAE*

AMY GLADSTEIN
JAMES REIF
GLADSTEIN & REIF
26 Court Street
Brooklyn, New York 11242
(212) 858-9131

Attorneys for *Amicus Curiae*

Adams Press Corp., 130 Cedar Street, N. Y. 10006—(212) 233-1050 110

In The

Supreme Court of the United States

October Term, 1981

No. 80-2150

DONALD FINNEGAN, *et al.*,

Petitioners,

—versus—

HAROLD D. LEU, *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

MOTION OF THE NATIONAL LABOR LAW CENTER OF THE NATIONAL LAWYERS GUILD FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*

Pursuant to Rule 42(3), the National Labor Law Center of the National Lawyers Guild respectfully moves for leave to file the accompanying brief as *amicus curiae.* Neither petitioners nor respondents have consented to the filing of this brief.

The National Labor Law Center of the National Lawyers Guild (sometimes hereinafter "Labor Law Center") is a project of the National Lawyers Guild, an organization of more than six thousand lawyers, law students and legal workers founded in 1937. The Labor Law Center, founded in 1980, is a non-profit legal and educational organization. It maintains a referral network of labor lawyers and a clearinghouse of information and research on current developments in labor law. It develops educational and training materials for lawyers and labor activists, provides some litigation and counseling services and publishes a journal, *Labor Update*. Its purposes are to assist the efforts of workers to build unions where there are none and to strengthen and democratize their organizations.

The decision in this case will impact generally upon the ability of appointed union officials to express views, opinions, disagreements, etc. within their unions and retain their positions. The decision will also influence the ability of labor unions to insure that those members appointed to positions of responsibility will effectively perform their union duties.

While the disposition of the instant case is of considerable importance, of even greater significance is the analysis which the Court employs in order to resolve the present controversy. That analysis will provide a framework for decisions in the many later cases involving similar situations which are sure to follow.

Guild attorneys have appeared in several similar cases already decided—sometimes on behalf of the removed official seeking reinstatement, sometimes on behalf of the labor organization, sometimes on behalf of a friend of the court. This prior experience has convinced us that neither side to the instant controversy has adequately reconciled the competing considerations which led Congress to enact

the Labor-Management Reporting & Disclosure Act of 1959 (sometimes hereinafter "LMRDA" or "Landrum-Griffin Act").

The petitioners seem to argue that removal of an official for expression violates Section 101(a)(2) of the Act as long as the official has not already engaged in conduct (in furtherance of his expression) which violates the responsibilities of his office. Petitioners would drawn no distinction between appointed and elected officials. They do not acknowledge that union members who are officials have certain responsibilities other members do not and that performance of these responsibilities may be impaired by certain expression.

Respondents make the factor of appointment dispositive. A member removed from union office for expression would never be entitled to reinstatement—regardless of the nature of his expression or the specific responsibilities his position entailed and regardless of the nature of the relationship, or lack thereof, between the expression and the position.

Our view is that the grant of summary judgment in the instant case was proper. We believe, however, that the lower courts reached the correct result for the wrong reasons which should not be adopted by this Court. We believe that whether an official's removal for expression violates Section 101(a)(2) turns upon a careful determination of whether the particular expression at issue precludes the effective performance of the official's specific responsibilities.

Because of the importance of this case to the labor movement and because our approach differs from that of

each of the respective parties, the National Labor Law Center requests leave to submit its views in the annexed brief as *amicus curiae*.

Respectfully submitted,

AMY GLADSTEIN
JAMES REIF
GLADSTEIN & REIF
26 Court Street
Brooklyn, New York 11242
(212) 858-9131

Attorneys for *Amicus Curiae*

TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	vi
INTEREST OF AMICUS CURIAE	1
STATUTORY PROVISIONS	2
INTRODUCTION AND SUMMARY OF ARGUMENT	3
ARGUMENT:	
I. A Union Member May State A Cause Of Action For Reinstatement To A Union Position Where It Is Alleged Removal Therefrom Was Based Upon Expressive Conduct By The Member	5
II. Section 101(a)(2) Is Violated Only If A Member Is Removed From A Union Position For Expressive Conduct Which Does Not Preclude The Effective Performance Of The Specific Responsibilities Assigned To That Office	8
III. Petitioners Were Removed For Expressive Conduct Which Would Preclude The Effective Performance Of The Responsibilities Of A Local 20 Business Agent. The Grant Of Summary Judgment Was Proper	17
CONCLUSION	19

PAGE

TABLE OF AUTHORITIES

Cases Cited

Adler v. *Board of Education*, 342 U.S. 548 (1952) 9, 10

Branti v. *Finkel*, 445 U.S. 507 (1980) 10, 14

Cehaich v. *Automobile Workers*, 496 F.Supp. 912 (E.D. Mich. 1980) 10

DeCampli v. *Greeley*, 293 F.Supp. 746 (D.N.J. 1968) 15

Elrod v. *Burns*, 427 U.S. 347 (1976) 10

Grand Lodge v. *King*, 335 F.2d 340 (9 Cir.), cert. den. 379 U.S. 920 (1964) 6, 8

Maceira v. *Pagan*, 649 F.2d 8 (1 Cir. 1981) 8

Miller v. *Holden*, 535 F.2d 912 (5 Cir. 1976) 7, 8

Navarro v. *Leu*, 469 F.Supp. 832 (N.D. Ohio, 1979), aff'd. 652F.2d 58 (6 Cir. 1981) 10, 16

Newman v. *Communication Workers Local 1101*, 597 F.2d 833 (2 Cir. 1979) 16

Perry v. *Sindermann*, 408 U.S. 593 (1972) 10-12

Pickering v. *Board of Education*, 391 U.S. 563 (1968) 14, 15

Sewell v. *Machinists Grand Lodge*, 445 F.2d 545 (5 Cir. 1971), cert.den. 404 U.S. 1024 (1972) 10

Weyhmueller v. *Janitors Union Local No. 1*, 509 F.Supp. 992 (N.D.Ill. 1981) 13, 14

Wieman v. *Updegraff*, 344 U.S. 183 (1952) 10

Wood v. *Dennis*, 489 F.2d 849 (7 Cir. 1973) cert. den. 415 U.S. 960 (1974) 14

PAGE

Statutes Cited

Labor-Management Reporting & Disclosure Act of 1959, Title 29 U.S.C. Sections 401 *et seq.*:

Section 3(n) 9, 13

Section 3(o) 6

Section 101 ..... 2-13, 18

Section 102 ..... 2, 7, 8

Section 401 12

Section 609 ..... 5, 8

28 U.S.C. Section 2202 8

Other Authorities Cited

Legislative History of the Labor-Management Reporting & Disclosure Act of 1959:

Vol. II, p. 1105 6

Vol. II, p. 1115 6

Congressional Record:

Vol. 105, p. 4813 6

Vol. 105, p. 5823 6

Vol. 105, p. 6717ff 6

In The

Supreme Court of the United States

October Term, 1981

No. 80-2150

DONALD FINNEGAN, *et al.*,

Petitioners,

—versus—

HAROLD D. LEU, *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF THE NATIONAL LABOR LAW CENTER OF THE NATIONAL LAWYERS GUILD AS *AMICUS CURIAE*

Interest of *Amicus Curiae*

The interest of the *amicus curiae* is set forth at pages i to ii of the foregoing motion for leave to file a brief as *amicus curiae.*

Statutory Provisions

Section 101(a)(2) of the LMRDA, 29 U.S.C. Section 411(a)(2), provides:

> Freedom of speech and assembly.—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided,* That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal of contractual obligations.

Section 102 of the LMRDA, 29 U.S.C. Section 412, provides:

> Civil action for infringement of rights; jurisdiction—
>
> Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located.

Introduction and Summary of Argument

Petitioners were business agents in the fourteen thousand member Local 20 of the International Brotherhood of Teamsters. In 1977 they supported the candidacy of Omar Brown, the local's incumbent president who was running for reelection against respondent Harold Leu. The campaign was hotly contested, as had been prior union elections between the Brown and Leu forces.

Leu was narrowly elected. Upon his assumption of the presidency, Leu removed petitioners from their posts as BAs. Petitioners thereupon commenced this litigation alleging they had each been removed because they had opposed Leu's candidacy and that removal on that basis violated Sections 101(a)(2) and 609 of the Labor-Management Reporting & Disclosure Act of 1959, Title 29 U.S.C. Sections 401 *et seq.* ("LMRDA").

Respondents denied petitioners had been removed simply because they had opposed Leu's candidacy. They pointed out that two BAs who had also opposed Leu's candidacy had been reappointed by Leu to their positions. The evidence also indicated that although requested to do so by Brown, petitioners had failed to pledge their support to Leu, prior to the institution of the instant suit.

The District Court found it unnecessary to resolve the dispute, holding that it was not as to a fact which was material to resolution of the case. Assuming petitioners were removed for the reason they alleged, the District Court concluded that summary judgment in favor of the respondents was nevertheless appropriate. It relied primarily on the view that removal of an appointed union official for expressive conduct does not violate the right of expression protected by Section 101(a)(2). The Court of Appeals affirmed on essentially the same ground.

We believe the lower courts reached the correct result, but on the basis of incorrect reasoning. Specifically, we submit that union members who are officials in their union are entitled to the protection of the LMRDA and that an official's removal for expression may in some circumstances violate Section 101(a)(2). If a removal does violate this free expression guarantee, the member would be entitled to an order of reinstatement pursuant to Section 102 of the Act.

Whether an official is elected or appointed is important in determining whether his removal violates Section 101 (a)(2) but is not dispositive. The argument that removal of an appointed official for expression can never violate Section 101(a)(2) rests conceptually on the doctrine of the so-called right-privilege distinction. This concept has been repeatedly repudiated in analogous First Amendment jurisprudence dealing with public employees and should likewise be rejected in the instant union setting.

The real question is whether the particular expression at issue precludes the effective performance of the specific responsibilities assigned the official. In making this determination, a court should examine whether the responsibilities are primarily as representative of union leadership among the membership or vice versa, whether the responsibilities involve policy-making and whether the official has substantial discretion in fulfilling his responsibilities. The court must also consider the degree to which the expression bears upon the performance of those responsibilities and the extent to which it contradicts a union policy or position.

In the instant case summary judgment in favor of the respondents was proper in light of the following considerations: Local 20 business agents, appointed by and serv-

ing at the pleasure of the Local president, serve primarily as agents of that president in carrying out his program; they have both long-range and *ad hoc* policy-making responsibilities; petitioners' support for the candidacy of the incumbent officers arose in the context of a long, acrimonious struggle between the incumbents and their challengers; that support, which occurred in a campaign in which service to the membership was a main issue, bore directly on petitioners' responsibilities, which were primarily in servicing the membership. In these circumstances, it was reasonable for respondent Leu to believe that other members of Local 20 could better fulfill the responsibilities of business agent under his administration.

ARGUMENT

I. A Union Member May State A Cause Of Action For Reinstatement To A Union Position Where It Is Alleged Removal Therefrom Was Based Upon Expressive Conduct By The Member.

At the outset it is necessary to treat certain absolutist contentions which, if accepted, would bar consideration of what we believe to be the fundamental issue in this case. These are: (a) that members who are union officials are not protected by the LMRDA; (b) that removal from a union position for expressive conduct does not affect membership status and hence cannot violate §101(a)(2); and (c) that because removal purportedly does not constitute "discipline" within the meaning of §609 of the Act, 29 U.S.C. Section 529, a Court may not order reinstatement of a removed official.[1]

---

[1] This case does not involve a union employee who happens to be a union member but it not an official of the union, for example, clerical staff personnel or a bookkeeper. We do not believe the LMRDA was intended to apply to the discharge of such a person.

The Labor-Management Reporting & Disclosure Act of 1959 affords certain democratic rights to members of labor organizations. Section 3(o) of the Act, 29 U.S.C. Section 402(o), defines "member" as "any person who has fulfilled the requirements for membership in [a labor] organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings consistent with lawful provisions of the constitution and by-laws of such organization." Section 101(a)(2), which is the primary basis for plaintiffs' suit herein, expressly applies to "every member." If the language of Section 3(o) is accorded its ordinary meaning, the mere act of becoming an official would not alter one's prior status as a "member" nor, thus, his entitlement to the protection of Section 101(a)(2). And see *Grand Lodge* v. *King*, 335 F.2d 340, 343-344 (9 Cir.), cert. den. 379 U.S. 920 (1964).[2]

Section 101(a)(2) protects union members' rights to (1) meet freely with other members, (2) express views, arguments or opinions and (3) express views at union meetings on candidates for union election or other business properly before the meeting (subject to established and reasonable meeting rules).[3] Thus petitioners' sup-

---

[2] The Congressional debates reflect the understanding that the LMRDA Bill of Rights were needed to and would protect union officials as well as ordinary members. See 105 Congressional Record 4813 (April 22, 1959), II Legislative History of the Labor-Management Reporting & Disclosure Act of 1959 (hereinafter "Leg. Hist. of LMRDA") 1105 (Sen. Mundt) and 105 Cong. Rec. 5823 (April 22, 1959), II Leg. Hist. of LMRDA 1115 (Sen. Goldwater).

[3] That part of Section 101(a)(2) which confers rights upon union members was divided by semi-colons in order to make clear that each of the three rights created was independent of the other two. See 105 Cong. Rec. 6717-6726 (April 25, 1959).

porting the candidacy of a member for election to union office is expression within the scope of Section 101(a)(2).

That section created new incidents of union membership: it created certain membership rights and, concomitantly, limited union reprisals for the exercise of those rights. When a member is removed from a union position for expression, his membership is thereby affected. He is both penalized for the exercise of a right of membership and his speech is rendered less effective. Removal denies him access to membership and information and the credibility he enjoyed in his position, which increased the effectiveness of the member's expression. Accordingly, removal for expression would serve to limit expression by union members and thereby impact upon their status as members.

If the limitation on freedom of expression were found to violate Section 101(a)(2) under the circumstances of a given case, the member would be entitled to an order of reinstatement. Section 102 of the LMRDA, 29 U.S.C. Section 412, provides in pertinent part:

> "Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States *for such relief (including injunctions) as may be appropriate.*" (Emphasis added).

When a member is unlawfully discharged from a union position because of expressive conduct, his statutory right of expression has been "infringed" upon. A mandatory injunction requiring reinstatement would be an "appropriate" remedy for a member discharged from union office for exercise of his Section 101 rights. *Miller* v. *Holden*,

535 F.2d 912, 915-916 (5 Cir. 1976); *Maceira* v. *Pagan*, 649 F.2d 8, 13 (1 Cir. 1981).[4]

None of the foregoing suggests that any member removed from a union position for expressive conduct is *per se* entitled to reinstatement or even that the petitioners here are entitled to a trial of their suit for reinstatement.[4a] It establishes only that such relief is not automatically barred in every case of removal for expressive conduct.

II. Section 101(a)(2) Is Violated Only If A Member Is Removed From A Union Position For Expressive Conduct Which Does Not Preclude The Effective Performance Of The Specific Responsibilities Assigned To That Office.

We are thus brought to the central issue presented in this case: What is the standard for determining whether removal of a member from a position as a union official for expressive conduct violates Section 101(a)(2)? Respondents argue for an elected versus appointed dicho-

---

[4] Because reinstatement may be obtained in a proper case pursuant to Section 102, see also 28 U.S.C. Section 2202, it is unnecessary to resolve here the widely debated question whether removal from a union position constitutes "discipline" within the meaning of Section 609 of the LMRDA. Compare, e.g., *Grand Lodge* v. *King*, 335 F.2d 340, 344-345 (9 Cir.), cert.den. 379 U.S. 920 (1964) and *Maceira* v. *Pagan*, 649 F.2d at 13-14 with *Miller* v. *Holden*, 535 F.2d at 914-915. Neither of the courts below addressed this issue.

[4a] In suits like this, the material facts will usually not be in dispute and summary judgment will often be appropriate. This case is a good example. See Point III *infra*.

tomy, that is, Section 101(a)(2) is not violated whenever the removal is of a member who has been appointed to his position. Petitioners, plaintiffs below, argue in essence that there is no distinction between elected and appointed officials in considering the legality of removal. They also appear to argue that if a member could not be disciplined for expression by conventional means such as fine, expulsion or suspension, he cannot be removed from office in reprisal for the same expression.

We respectfully submit that neither of these approaches is consistent with the LMRDA or should be adopted by this Court. Respondents make dispositive a factor which is significant, but one factor among others to be weighed. Petitioners' approach would undercut the ability of labor organizations to function effectively as institutions and to fulfill their obligations.

The "elected versus appointed" dichotomy, as a conclusive distinction, finds no support in the language of Section 101(a)(2) or other provisions of the LMRDA. By contrast, when Congress intended to exclude certain officials from the coverage of part of the Act, it did so by explicitly limiting the coverage of that part of the Act. For example, Title IV only applies to "officers" as that term is rather narrowly defined in Section 3(n) of the Act, 29 U.S.C. Section 402(n).

It is said, however, that a member has no 'right' to hold an appointive position, in contrast to one to which he has been elected. Conceptually, this is an invocation in the union setting of the so-called right-privilege distinction which governed First Amendment jurisprudence regarding public employment. See, e.g., *Adler* v. *Board of Education*, 342 U.S. at 548 (1952).

Just as the impact on the constitutional freedom of expression of forced choice between expression and employment was said to be "remote", *Adler, supra* at 493, so too forcing a union member to choose between expression and a union position is said to have only a "slight" impact on the statutory right of expression. E.g., *Cehaich* v. *Automobile Workers,* 496 F.Supp. 912, 918 (E.D.Mich. 1980).[5] Just as terminating public employees for expression was assertedly not an infringement of the First Amendment because the persons "are at liberty to retain their beliefs and associations and go elsewhere," *Adler, supra* at 492, so too discharging a union official in retaliation for expression supposedly does not violate Section 101(a)(2) because "[t]he dismissed official himself retains the right to continue to express his views as a member . . ." *Cehaich, id.* In short, discharge from a union position supposedly impacts upon official status but not member status,[6] in the same way discharge from public employment was said to impact upon employment but not citizen status. *Adler, id.*

The right-privilege distinction has been firmly repudiated in public employment jurisprudence. *Branti* v. *Finkel,* 445 U.S. 507, 514-517 (1980); *Elrod* v. *Burns,* 427 U.S. 347, 357-359 (1976); *Perry* v. *Sindermann,* 408 U.S. 593, 597-598 (1972); *Wieman* v. *Updegraff,* 344 U.S. 183, 191-

---

[5] The District Judge in *Cehaich* was a member of the Court of Appeals panel in the instant case.

[6] E.g., the District Court below stated: "The union leadership can discipline a union steward or agent by removing him from his appointed position, where, as here, the members' rights of free speech as *union members* has [sic] not been affected." 469 F.Supp. at 835 (emphasis in original). See also *Sewell* v. *Machinists Grand Lodge,* 445 F.2d 545, 548 (5 Cir. 1971), cert. den. 404 U.S. 1024 (1972); *Cehaich* v *Automobile Workers, supra* at 915.

192 (1952). Its rejection as a constitutional concept counsels its rejection in construing Section 101(a)(2) as applied to the removal of appointed union officials.

It is now recognized that forcing a person to choose between his position and the exercise of his right of expression has a substantial adverse impact on the latter. *Perry* v. *Sindermann, supra* at 597. This is particularly true in a union setting. Often official positions confer financial reward, prestige, power and influence within the union. A member can be expected to want to retain such a position badly enough that he will refrain from expression that will threaten his continued tenure. Indeed, any member who would seek a union position in the future may be deterred from exercising his statutory right of expression for fear his views will cause union leaders to later deny him appointment to a union position.

The contention that a reprisal discharge impacts upon a member's status as an appointed official but not as a member flows from a one-sided view of membership. The nature of the penalty or sanction is only one factor in determining effect on membership status; equally important is the reason for imposition of that sanction.

By virtue of Section 101(a)(2), freedom of expression is an attribute of union membership status. Thus when a sanction is imposed *as a penalty for the exercise of that freedom,* there is a direct impact on membership status—whatever the form or character of the sanction. Penalizing the right of expression is penalizing the exercise of a right of membership. Forcing a member to choose between his union position and his beliefs substantially chills the exercise of the right of free expression and, because this is a right of membership, this compulsion impacts upon an official's membership status.

To paraphrase *Perry* v. *Sindermann, supra* at 597, even though a member may have no 'right' to an appointed union position and even though the union may deny him that position for any number of reasons, there are some reasons upon which the union may not rely. It may not deny a member an appointed union position on a basis that infringes his interests protected by the LMRDA, especially his interest in freedom of expression guaranteed by Section 101(a)(2). To allow such a denial because of expression protected by Section 101(a)(2) would penalize and inhibit exercise of that freedom. This would allow the union to produce indirectly a result, suppression of expression, which it could not command directly, as by fine, suspension or expulsion. Such interference with Section 101(a)(2) would be impermissable.

There is no statutory requirement that business agents or many other union officials be elected to their positions. Section 401 of the LMRDA, 29 U.S.C. Section 481, requires the election only of officials who are "officers" as defined in Section 3(n). Unions are thus free to appoint or elect other officials as they see fit. A holding that no appointed official could state a cause of action under Section 101(a)(2) for removal from his position would only encourage leaders to appoint persons to fill union positions falling outside Section 3(n) of the Act, rather than permit elections therefor. This would run contrary to the purpose of the LMRDA which was to increase, not decrease, internal union democracy.

While for the foregoing reasons we do not believe the "elected versus appointed" dichotomy necessarily determines the legality of removals from union positions for expressive conduct, at the same time we do not think petitioners' contentions represent a sound accommodation of the interests protected by Section 101(a)(2). While

the rights guaranteed by that section are broad, they are not absolute. In the terms of the provisos thereto, they are limited by "the responsibility of every member toward the organization as an institution" and by the need to avoid expressive conduct "that would interfere with [the union's] performance of its legal or contractual obligation." Petitioners' submissions do not adequately acknowledge that an official has certain responsibilities toward his union by virtue of his position therein that the average member does not have and that, at times, expression may be in conflict with those responsibilities.

Those whose responsibility it is to act on behalf of a union president can reasonably be expected to do so only if they share with the president a common perspective as to how they should perform their official assignments. Equating appointed with elected officials fails to take into account that in general the former are more likely than the latter to have the obligation to function as agents of the president.

We submit Section 101(a)(2) is the appropriate starting place in adjudging the legality of removal for expressive conduct. The language thereof (and the legislative history) reflects two central concerns: encouraging the free flow of ideas by union members and protecting the functioning of unions as institutions and in the fulfillment of their obligations. The former is reflected in the Section 101(a)(2) language creating rights and the latter in the provisos thereto.

The juxtaposition of these concerns indicates the proper standard for determining whether an official may be removed for expressive conduct, to wit, whether the particular expression at issue precludes the effective performance of the specific responsibilities assigned that official. See *Weyhmueller* v. *Janitors Union Local No. 1*,

509 F.Supp. 992, 997 (N.D.Ill. 1981) (whether member's expression "interfere[s] with the performance of his official duties"); cf. *Branti* v. *Finkel*, 445 U.S. at 518 (whether particular expression there at issue would interfere with "the effective performance of the public office involved"); *Pickering* v. *Board of Education*, 391 U.S. 563, 572-573 (1968) (teacher's criticisms of superiors not shown to have "impeded the teacher's proper performance of his daily duties in the classroom or to have interfered with the regular operation of the schools generally.")

By itself, this test is somewhat general. To resolve the instant case and to provide guidance to lower courts faced with other suits for reinstatement to union office, it is appropriate to elaborate thereon.

The test we have proposed requires a careful examination of the relationship, if any, between the specific expression involved and the particular responsibilities of the official. The responsibilities of a given office must be examined in their particularities, for these vary considerably from position to position. Do they include policy-making either on a long-range or *ad hoc* basis? See *Wood* v. *Dennis*, 489 F.2d 849, 858 (7 Cir. 1973) (Stevens, J. concurring), cert. den. 415 U.S. 960 (1974). Expression concerning union affairs is likely to bear more on a policy-making position than on one not involving the making of policy.

What is the degree of autonomy and/or discretion a member has in the performance of his responsibilities? Expression is less likely to interfere with performance of responsibilities which are essentially ministerial. On the other hand, the greater autonomy or discretion an official has, the more his views on important union issues are likely to influence how he performs those responsibilities.

Thirdly, to what extent is the role of the official to represent, among the members, the views of union leaders and to implement their program? Conversely, to what extent is it to represent the views of membership or his own views to union leaders? See *DeCampli* v. *Greeley*, 293 F.Supp. 746, 752 (D.N.J. 1968). The more it is the former, the more expression may bear upon performance of official responsibilities.

It is here that the factor of appointment is most significant. Where an official is appointed by the union president, it indicates his primary obligation is to represent the views of the president among the membership and to implement his program. Where this is true, the president is entitled to greater political loyalty. Appointment is not conclusive on an official's primary obligation, but we think it raises a rebuttable presumption that that obligation is primarily to represent the president and his program.

With respect to the expressive conduct at issue, does it concern matters of general public interest or does it relate to matters primarily of concern to the union in particular? See *Pickering* v. *Board of Education*, 391 U.S. at 571. Isn't there a difference between opposing a candidate for President of the United States and opposing a strike by one's own union? If the subject matter is of special concern to one's union, to what extent does the expression impact on the particular responsibilities of the plaintiff? Would opposition to voluntary COPE contributions likely bar effective performance of a shop stewardship?

Does the expression adversely affect an established union policy or position or does it simply run contrary to the views of those individuals currently holding office? For example, is an official's advocacy of strike preparations contrary to an already determined union position

or simply contrary to what leaders hope that policy will be. See, e.g., *Newman* v. *Communication Workers Local 1101*, 597 F. 2d 833, 836 (2 Cir. 1979), where the Court noted the plaintiff's advocacy of strike preparations, while contrary to the officers' views, had occurred prior to determination of the union's position. See also *Maceira* v. *Pagan*, 639 F.2d at 16 (substantive position expressed "in conformity with later union policy").

In general, the more expression impacts upon the particular responsibilities of the official, the more it can be said that expressions of disagreement with established programs or the views of those whom the plaintiff is representing preclude effective performance of his responsibilities and justify his removal. The considerations identified here do not provide a "bright line" providing a quick, simple resolution of the myriad of factual patterns which have been and will be presented to the courts. We submit they are, however, more faithful to the central concerns underlying the LMRDA than are the alternatives presented by the parties.[7]

We wish to emphasize that the LMRDA does not impose a "just cause" standard upon removal of union officials. A union may remove a member from a position with or without just cause, so long as it is not for expression which does not interfere with performance by that official of his assigned responsibilities.

---

[7] The District Court discussed the question whether the removals of petitioners "were an attempt to stifle dissent in the union." 469 F.Supp. at 835. If that were their purpose, orders of reinstatement might be warranted. However, mere removals for expressive conduct do not without more establish such a purpose.

III. Petitioners Were Removed For Expressive Conduct Which Would Preclude The Effective Performance Of The Responsibilities Of A Local 20 Business Agent. The Grant Of Summary Judgment Was Proper.

In granting summary judgment, the District Court had before it depositions, affidavits and testimony adduced at the hearing on petitioners' motion for preliminary relief. These indicated the following undisputed facts:

Business agents of IBT Local 20 are fulltime, salaried employees appointed by the Local president and, under union by-laws, serving at the pleasure of the president. The joint resignation of all BAs in 1974 upon the election of a new president indicates an understanding that it is the prerogative and practice of a president to appoint new BAs at the beginning of his administration.

Local 20 business agents are voting members of the union's Stewards Council, its legislative and long-range policy-making body. BAs conduct collective bargaining negotiations. They have substantial responsibility for and discretion in the enforcement of the contract. This includes making the primary determination whether to take grievances to arbitration. Business agents are responsible for carrying out assignments from the president.

Petitioners actively supported the candidacy of incumbent union president Brown, running for reelection against respondent Leu. The election was hotly contested, as had been prior elections between Leu and Brown. A major point in Leu's campaign was his contention that members had not been adequately serviced by the incumbent officials. In short, he argued the local had not adequately fulfilled its responsibility to effectively represent the membership. Because the primary servicing is performed by

the BAs, the presidential election became, in essence, at least in part, a referendum on petitioners' p tormance of their union jobs. In opposing Leu, petitioners in effect defended the adequacy of their performance of their duties. The evidence does not indicate removal of petitioners was an attempt to stifle dissent.

In these circumstances, we believe Leu's removal of petitioners upon his election as president was reasonable and lawful under Section 101(a)(2). Local 20 BAs are plainly policy-making officials. They act primarily as agents or arms of the president in the fulfillment of his program for the local. The expression at issue affected union leadership and, by virtue of the campaign issues, concerned fulfillment of the union's obligation to represent the membership. This bore intimately on petitioners' responsibilities and the performance thereof.

Leu's election in these circumstances can reasonably be said to reflect the membership's view that the business agents in general were not providing adequate service. Where service to the membership is an important issue and petitioners oppose the successful presidential candidate pledged to improving that service, it is entirely reasonable for that candidate, at the beginning of his administration, to believe other persons could better perform the job of business agent as that position would exist under the new president's leadership. Particularly is this so where there is a long history of antagonism within the Local between the Leu and Brown forces. Any assumption to the contrary would not reflect the realities of how unions function as institutions.

We therefore believe the record adequately reflects the facts which are material to a reasoned resolution of the instant case and that there is no dispute as to these material facts. To require respondents to defend at trial

against petitioners' allegations would deny Local 20's president the authority granted him by union by-laws to select those persons he believes will best fulfill the responsibilities of BAs and to compel him to accept as BAs persons who, on the basis of their conduct and the surrounding circumstances, would not effectively perform their policy-making responsibilities as his agents. Under the circumstances presented, such a result would constitute an unwarranted intrusion into the internal affairs of a labor organization.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals should be affirmed.

Dated: December 30, 1981

Respectfully submitted,

AMY GLADSTEIN
JAMES REIF
GLADSTEIN & REIF
26 Court Street
Brooklyn, New York 11242
(212) 858-9131

Attorneys for *Amicus Curiae*

Certificate of Service

I, James Reif, a member of the bar of the Supreme Court, hereby certify that all parties required to be served have been served. Three (3) copies of the Motion of the National Labor Law Center for leave to file a brief as *Amicus Curiae* and the Brief of the National Labor Law Center as *Amicus Curiae* were mailed first class postage prepaid this 31st day of December, 1981 to Samuel G. Bolotin, Bolotin & Bolotin, Co., L.P.A., 2nd Floor Gardner Building, 506 Madison Avenue, Toledo, Ohio 43604 and to Jack Gallon, Gallon, Kalniz & Iorio Co., L.P.A., 3161 North Republic Blvd, Toledo, Ohio 43615.

JAMES REIF